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National Defense

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32

PARTS 700 TO 799
Revised as of July 1, 1986

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code of federal regulations

National Defense

32

PARTS 700 TO 799

Revised as of July 1, 1986

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1986.

THIS TITLE

Title 32—National Defense is composed of six volumes. The parts in these volumes are arranged in the following order: Parts 1-189, Parts 190-399, Parts 400-629, Parts 630-699, Parts 700-799, Part 800 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1986.

The current regulations issued by the Department of the Army appear in the volumes containing Parts 400-629 and Parts 630-699; those issued by the Department of the Navy appear in the volume containing Parts 700-799, and those issued by the Department of the Air Force appear in the volume containing Part 800 to End.

For this volume LaJuana D. Caldwell was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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AUTHORITY: 10 U.S.C. 6011; 38 FR 7892, Mar. 26, 1973.

SOURCE: 39 FR 7135, Feb. 25, 1974, unless otherwise noted.

Subpart A—The Department of the Navy

§ 700.101 Origin and authority.

(a) The naval affairs of the country began with the war for independence, the American Revolution. On 13 October 1775, Congress passed legislation forming a committee to purchase and arm two ships. This in effect created the Continental Navy. Two battalions of Marines were authorized on 10 November 1775. Under the Constitution, the First Congress on 7 August 1789, assigned responsibility for the conduct of naval affairs to the War Department. On 30 April 1798, the Congress established a separate Navy Department with the Secretary of the Navy as its chief officer. On 11 July 1798, the U.S. Marine Corps was established as a separate service, and in 1834 was made a part of the Department of the Navy.

(b) The National Security Act of 1947, as amended, is the fundamental law governing the position of the Department of the Navy in the organization for national defense. In 1949, the Act was amended to establish the Department of Defense as an Executive Department, and to establish the Departments of the Army, Navy and Air Force (formerly established as Executive Departments by the 1947 Act) as military departments within the Department of Defense.

(c) The responsibilities and authority of the Department of the Navy are vested in the Secretary of the Navy, and are subject to his reassignment and delegation. The Secretary is bound by the provisions of law, the direction of the President and the Secretary of Defense, and, along with all Government agencies, the regulations of certain nondefense agencies in their respective areas of functional responsibility.

§ 700.102 Objectives.

The fundamental objectives of the Department of the Navy, within the Department of Defense, are (a) to organize, train, equip, prepare, and maintain the readiness of Navy and Marine Corps forces for the performance of military missions as directed by the President or the Secretary of Defense, and (b) to support Navy and Marine Corps forces, including the support of such forces and the forces of other military departments, as directed by the Secretary of Defense, which are assigned to unified or specified commands. Support, as here used, includes administrative, personnel, material and fiscal support, and technological support through research and development.

§ 700.103 Composition.

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense. It is composed of the executive part of the Department of the Navy; the Headquarters, United States Marine Corps; the entire operating forces, including naval aviation, of the United States Navy and of the United States Marine Corps, and the reserve components of those operating forces; and all shore activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy. It includes the United States Coast Guard when it is operating as a service in the Navy.

§ 700.104 The principal parts of the Department of the Navy.

(a) Functionally, organizationally and geographically the Department of the Navy has from practically the beginning of the Federal Government under the Constitution consisted of three parts: The Operating Forces of the Navy, the Navy Department, and the Shore Establishment.

(b) The operating forces of the Navy comprise the several fleets, sea-going forces, sea-frontier forces, district forces, Fleet Marine Forces, other assigned Marine Corps Forces, the Military Sealift Command, and other forces and activities that may be assigned thereto by the President or the Secretary of the Navy.

(c) The Navy Department refers to the central executive offices of the Department of the Navy located at the seat of the government. The Navy Department is organizationally comprised of the Office of the Secretary of the Navy which includes his Civilian Executive Assistants, Offices of his Assistants, and the headquarters organizations of the Office of Naval Research, the Office of the Judge Advocate General, and the Office of the Comptroller of the Navy; the Office of the Chief of Naval Operations, the Headquarters, United States Marine Corps; and, under the command of the Chief of Naval Operations, the Headquarters, Naval Material Command,

and the headquarters organizations of the Bureau of Naval Personnel and the Bureau of Medicine and Surgery. In addition, the Headquarters, United States Coast Guard, is included when the United States Coast Guard is operating as a service in the Navy.

(d) The shore establishment is comprised of shore activities with defined missions approved for establishment by the Secretary of the Navy.

§ 700.105 Definition of terms.

The following definitions shall apply to the regulations in this part:

(a) Command—(DOD) (1) The authority which a commander in the military service lawfully exercises over his subordinates by virtue of rank or assignment. Command includes the authority and responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. It also includes responsibilities for health, welfare, morale, and discipline of assigned personnel.

(2) An order given by a commander; that is, the will of the commander expressed for the purpose of bringing about a particular action.

(3) A unit or units, an organization, or an area under the command of one individual.

(4) To dominate by a field of weaponfire or by observation from a superior position.

(b) Superior—A commander or officer in command of a senior force, unit, or organization in line of command. Also, a senior person in line of command.

(c) Flag and General Officers—Flag officer means an officer of the Navy or Coast Guard above the grade of captain. General officers means an officer of the Marine Corps, the Army, or the Air Force above the grade of colonel.

(d) Person in the naval service—Means a person, male or female, appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps. Also, same meaning for member of the naval service.

(e) Persons in the Department of the Navy—All persons in the naval service and civilians employed under the Department of the Navy.

(f) Ships—A classification of water-borne craft which comprises generally the oceangoing vessels and craft of the Navy, and such other water-borne craft as may be assigned this classification.

(g) Service Craft—A classification of water-borne craft which comprises generally the water-borne utilitarian craft not classified as ships or boats.

(h) Boats—A classification of water-borne craft which comprises generally the water-borne craft suitable primarily for shipboard and similar use.

(i) Active Status—A status of ships and service craft. Active status ships or service craft are assigned to the active fleets and to their supporting activities or are ships of the Military Sealift Command which are titled in the United States or are operated under long-term bareboat charter. Ships and service craft in active status are "in commission" or "in service."

(j) Inactive Status—A status of ships and service craft. Inactive status ships and service craft are in reserve and not currently required for duty in the active fleets or supporting forces. Ships and service craft in inactive status are "in commission, in reserve," or "in service, in reserve" or "out of commission, in reserve" or "out of service, in reserve."

(k) Special Status—A status of ships and service craft. Ships and service craft in special status shall include those units for which the Navy is charged with certain responsibilities by reason of custody or title, but which are not in the active or inactive status. Ships and service craft in special status are "in commission, special" or "in service, special" or "out of commission, special" or "out of service, special."

(l) Vessel—Includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. (1 U.S.C. 3).

(m) Naval Activity—A unit of the Department of the Navy, of distinct identity, and established under an officer in command or in charge.

(n) Naval Station—A naval activity on shore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to naval jurisdiction and immediate authority of the commanding officer.

[41 FR 18074, Apr. 30, 1976]

Subpart B—The Secretary of the Navy

§ 700.201 Responsibilities of the Secretary of the Navy.

The Secretary of the Navy is the head of the Department of the Navy. Under the direction, authority, and control of the Secretary of Defense, the Secretary of the Navy is responsible for the policies and control of the Department of the Navy, including its organization, administration, operation, and efficiency.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.202 Succession to duties.

(a) When there is a vacancy in the Office of the Secretary of the Navy, or during the absence or disability of the Secretary, the Under Secretary of the Navy, and, in the order prescribed by the Secretary of the Navy, the Assistant Secretaries of the Navy succeed to the duties of the Secretary. If the Secretary does not prescribe an order for succession to the duties of that office, the Assistant Secretaries shall succeed to those duties after the Under Secretary in the order in which they took office as Assistant Secretaries.

(b) During the temporary absence of the above officials, the Chief of Naval Operations or, in his absence, the Vice Chief of Naval Operations succeeds to the duties of the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.203 The Civilian Executive Assistants.

(a) The Civilian Executive Assistants to the Secretary of the Navy are the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the General Counsel of the Navy and the Deputy Under Secretary of the Navy. It is the policy of the Secretary to assign Department-wide responsibilities essential to the efficient administration of the Department of the Navy to and among his Civilian Executive Assistants.

(b) The Civilian Executive Assistants, within their respective areas of responsibility, are the principal advisers and assistants to the Secretary on the administration of the affairs of the Department of the Navy. In carrying out these duties, they shall do so in harmony with the statutory position of the Chief of Naval Operations as "the principal naval adviser and naval executive to the Secretary on the conduct of activities of the Department of the Navy" and the responsibilities of the Chief of Naval Operations and the Commandant of the Marine Corps as set forth in these regulations. The Civilian Executive Assistants are authorized and directed to act for the Secretary within their assigned areas of responsibility.

(c) The Under Secretary of the Navy is designated as the deputy and principal assistant to the Secretary of the Navy, and acts with full authority of the Secretary in the general management of the Department of the Navy, and supervision of offices and organizations as assigned by the Secretary.

(d) The Assistant Secretary of the Navy (Financial Management) is the Comptroller of the Navy, and is responsible for all matters related to the financial management of the Department of the Navy, including budgeting, accounting, disbursing, financing, progress and statistical reporting, auditing, management information systems, automatic data processing systems and equipment (less than integral to a weapons system), and supervision of offices and organizations as assigned by the Secretary. Under the Comptroller, the Deputy Comptroller of the Navy shall, in addition to performing other duties assigned, serve as an adviser and assistant to the Chief of Naval Operations and the Commandant of the Marine Corps with respect to financial and budgetary matters.

(e) The Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics) is responsible for the overall supervision of manpower and reserve component affairs of the Department of the Navy, including policy and administration of affairs related to military (active and inactive) and civilian personnel; all stages of the acquisition of naval ships funded by the appropriation "Ships Construction, Navy"; all Department of the Navy acquisition programs following full scale production decision (Milestone III); the business, contractual, manpower, and logistic support aspects of the Department of the Navy Acquisition programs, including policy and administration of affairs related thereto; the maintenance, alteration, supply, distribution, and disposal of material; all transportation matters; the acquisition, construction, utilization, improvement alteration, maintenance, and disposal of real estate and facilities, including capital equipment utilities, housing, and public quarters; printing and publications; labor relations with respect to contractors with the Department of the Navy; industrial security; the Mutual Defense Assistance Program, as related to the supplying of material, including Foreign Military Sales; and supervision of offices and organizations as assigned by the Secretary.

(f) The Assistant Secretary of the Navy (Research, Engineering and Systems) is responsible for all technical aspects of all stages of Department of the Navy acquisition programs through the full-scale production decision (Milestone III), including policy and administration of affairs related thereto, with the exception of the acquisition of naval ships funded by the appropriation 'Ships Construction, Navy'; the technical aspects of the maintenance or alteration of material; all matters related to research, development, engineering, test, and evaluation efforts within the Department of the Navy, including management of the appropriation, 'Research, Development, Test and Evaluation, Navy'; oceanography; ocean engineering and closely related matters; and supervision of offices and organizations as assigned by the Secretary.

(g) The General Counsel of the Navy is responsible for providing legal advice, counsel, and guidance to the Secretary and the other Civilian Executive Assistants on any matter that they may direct or that the General Counsel determines should be brought to their attention. The General Counsel is also responsible for providing all necessary legal advice, counsel, and guidance to the staffs of the Secretary and the other Civilian Executive Assistants; the supervision of the Office of the General Counsel; and such other duties as the Secretary may assign. The responsibilities of the General Counsel are not intended to infringe upon, or interfere with, the responsibilities of the Judge Advocate General for the administration of military justice and such other matters as may be assigned to that officer by statute or by the Secretary.

(h) The Deputy Under Secretary of the Navy is responsible to the Secretary or Under Secretary for acting as a focal point and coordinator for the resolution of problems which require high-level special attention. In addition, the Deputy Under Secretary is the major claimant for funds and manpower supporting the Department of the Navy Secretariat, Staff Offices, and the Department of the Navy General Gift Fund. The Deputy Under Secretary is responsible for general over-sight, policy and procedure formulation and coordination regarding environmental matters affecting the Department of the Navy, with the exception of occupational health and safety and employee working conditions.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80277, Dec. 4, 1980]

§ 700.204 The staff assistants.

The Staff Assistants to the Secretary of the Navy are the Chief of Information; the Chief of Legislative Affairs; the Director, Office of Program Appraisal; and the heads of such other offices and boards as may be established by law or by the Secretary for the purpose of assisting the Secretary or one or more of the Civilian Executive Assistants in the administration of the Department of the Navy. The foregoing shall supervise all functions and activities internal to their offices and assigned shore activities, if any, and shall be responsible to the Secretary or to one of the Civilian Executive Assistants for the utilization of resources by and the operating efficiency of all activities under their supervision. The duties of the individual Staff Assistants and their respective offices will be as provided by law or as assigned by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.205 The Chief of Naval Research, The Judge Advocate General, The Deputy Comptroller of the Navy.

The Chief of Naval Research shall command the Office of Naval Research and assigned shore activities. The Judge Advocate General shall command the Office of the Judge Advocate General and assigned shore activities. The Deputy Comptroller of the Navy shall command the Office of the Comptroller of the Navy and assigned shore activities. Each of them shall be responsible to the Secretary of the Navy or to one of the Civilian Executive Assistants, as assigned, for the utilization of resources by and the operating efficiency of all activities under their respective commands. The duties of the Chief of Naval Research, the Judge Advocate General, and the Comptroller of the Navy will be as provided by law or as assigned by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.206 Authority over organizational matters.

Subject to the approval of the Secretary of the Navy or guidance hereafter furnished by him, the Civilian Executive Assistants, the Chief of Naval Operations, the Commandant of the Marine Corps, the Chief of Naval Research, the Judge Advocate General, the Deputy Comptroller of the Navy, and the Staff Assistants are individually authorized to organize, assign, and reassign responsibilities within their respective commands or offices in the organization of the Department of the Navy, including the establishment and disestablishment of such component organizations as may be necessary, subject to the following:

(a) The authority to disestablish may not be exercised with respect to any organizational component of the Department established by law.

(b) The Secretary retains the authority to approve the establishment of and disestablishment of shore activities, which will be done in accordance with procedures prescribed by the Secretary.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

Subpart C—The Chief of Naval Operations

§ 700.301 Senior Military Officer of the Department of the Navy.

(a) The Chief of Naval Operations is the senior military officer of the Department of the Navy, and takes precedence above all other officers of the naval service, except an officer of the naval service who is serving as Chairman of the Joint Chiefs of Staff.

(b) The Chief of Naval Operations is the principal naval adviser to the President and to the Secretary of the Navy on the conduct of war, and the principal naval adviser and naval executive to the Secretary on the conduct of the activities of the Department of the Navy.

(c) The Chief of Naval Operations is the Navy member of the Joint Chiefs of Staff and is responsible, in coordination with the Commandant of the Marine Corps, for keeping the Secretary of the Navy fully informed on matters considered or acted upon by the Joint Chiefs of Staff. In this capacity, he is responsible, under the President and the Secretary of Defense, for duties external to the Department of the Navy, as prescribed by law.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.302 Succession to duties.

The Vice Chief of Naval Operations, and then the officers of the Navy, eligible for command at sea, on duty in the office of the Chief of Naval Operations in the order of their seniority, shall, unless otherwise directed by the President, perform the duties of the Chief of Naval Operations during his absence, or disability, or in the event of a temporary vacancy in that office.

§ 700.303 Specific authority and duties of the Vice Chief of Naval Operations.

(a) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same force and effect as those issued by the Chief of Naval Operations.

(b) Orders issued by the Vice Chief of Naval Operations in performing other duties have the same force and effect as those issued by the Chief of Naval Operations.

§ 700.304 Authority and responsibility.

(a) Internal to the administration of the Department of the Navy, the Chief of Naval Operations, under the direction of the Secretary of the Navy, shall command the Operating Forces of the Navy. The Chief of Naval Operations shall also command the Naval Material Command, the Bureau of Naval Personnel, and the Bureau of Medicine and Surgery. In addition, he shall command such shore activities as may be assigned to him by the Secretary. He shall be responsible to the Secretary for the utilization of resources by, and the operating efficiency of, all commands and activities under his command.

(b) In addition, the Chief of Naval Operations has the following specific responsibilities:

(1) To organize, train, equip, prepare, and maintain the readiness of Navy forces, including those for assignment to unified or specified commands for the performance of military missions as directed by the President, the Secretary of Defense, or the Joint Chiefs of Staff. Naval forces, when assigned to a unified or specified command, are under the full operational command of the commander to whom they are assigned.

(2) To determine and direct the efforts necessary to fulfill current and future requirements of the Navy (less Fleet Marine Forces and other assigned Marine Corps forces) for manpower, material, weapons, facilities, and services, including the determination of quantities, military performance requirements, and times, places, and priorities of need.

(3) To exercise leadership in maintaining a high degree of competence among Navy officer and enlisted and civilian personnel in necessary fields of specialization, through education, training, and equal opportunities for personal advancement, and maintaining the morale and motivation of Navy personnel and the prestige of a Navy career.

(4) To plan and provide health care for personnel of the naval service and their dependents.

(5) To direct the organization, administration, training, and support of the Naval Reserve.

(6) To inspect and investigate components of the Department of the Navy to determine and maintain efficiency, discipline, readiness, effectiveness, and economy, except in those areas where such responsibility rests with the Commandant of the Marine Corps.

(7) To determine the needs of naval forces and activities for research, development, test, and evaluation; to plan and provide for the conduct of development, test, and evaluation which are adequate and responsive to long-range objectives, immediate requirements, and fiscal limitations; and to provide assistance to the Assistant Secretary of the Navy (Research and Development) in the direction, review, and appraisal of the overall Navy RDT&E Program to insure fulfillment of stated requirements.

(8) To formulate Navy strategic plans and policies and participate in the formulation of joint and combined strategic plans and policies and related command relationships.

(9) To budget for commands, bureaus, and offices assigned to the command of the Chief of Naval Operations, and other activities and programs as assigned, except as may be otherwise directed by the Secretary of the Navy.

(c) The Chief of Naval Operations, under the direction of the Secretary of the Navy, shall (except for those areas wherein such responsibility rests with the Commandant of the Marine Corps) exercise overall authority throughout the Department of the Navy in matters related to the effectiveness of the support of the Operating Forces of the Navy, the coordination and direction of assigned Navy-wide programs and functions including those assigned by higher authority, the coordination of activities of the Department of the Navy in matters concerning effectiveness, efficiency, and economy, and matters essential to naval military administration, such as security, intelligence, discipline, communications, and matters related to the customs and traditions of the naval service.

§ 700.305 Naval Vessel Register, classification of naval craft, and status of ships and service craft.

(a) The Chief of Naval Operations shall be responsible for the Naval Vessel Register (except the Secretary of the Navy shall strike vessels from the Register) and the assignment of classification for administrative purposes to water-borne craft and the designation of status for each ship and service craft. The classification of water-borne craft and the status of ships and service craft are found in the glossary.

(b) Commissioned vessels and craft shall be called "United States Ship ——" or "U.S.S. ——".

(c) Civilian manned ships of the Military Sealift Command or other commands designated "active status, in service" shall be called "United States Naval Ship ——" or "U.S.N.S. ——".

(d) Ships and service craft designated "active status, in service," except those described by paragraph c of this article, shall be referred to by name, when assigned, classification, and hull number (e.g., "HIGHPOINT PCH-1" or "YOGN-8").

(e) The Chief of Naval Operations shall designate hospital ships and medical aircraft as he deems necessary. Such designation shall be in compliance with the Geneva Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949 and he shall ensure compliance with the notice provisions of that Convention.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.306 The Chief of Naval Material.

The Chief of Naval Material, under the command of the Chief of Naval Operations, shall command the Naval Material Command. In addition to the tasks which may be assigned by the Chief of Naval Operations, he shall:

(a) Provide direct staff assistance to the Secretary of the Navy and the Civilian Executive Assistants in matters pertaining to contracting, procurement, production and exploratory development, laboratories assigned to the Chief of Naval Material and to related matters. In these areas, the Chief of Naval Material shall inform the Chief of Naval Operations and, when appropriate, the Commandant of the Marine Corps in matters of policy and significant actions.

(b) Be responsive directly to the Commandant of the Marine Corps in providing necessary planning and programming data requirements and in meeting those particular material support needs of the U.S. Marine Corps which are required to be provided by the Naval Material Command.

(c) Provide the Commandant of the Marine Corps with timely advice concerning training and technical requirements essential for the operation and maintenance by Marine Corps personnel of new equipment under development.

(1) Be responsive to the heads of other organizations in meeting their material support needs which are provided by the Naval Material Command.

(2) Provide guidance to Navy and Marine Corps Commands, as required, on functional areas related to Naval Material Command acquisition and logistics support responsibilities and other technical or professional matters as appropriate.

§ 700.307 The Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery.

The Chief of Naval Personnel, under the command of the Chief of Naval Operations, shall command the Bureau of Naval Personnel. The Chief, Bureau of Medicine and Surgery, (who is also the Surgeon General of the Navy), under the command of the Chief of Naval Operations, shall command the Bureau of Medicine and Surgery. In addition to the tasks which may be assigned by the Chief of Naval Operations, they shall:

(a) Be responsive directly to the Commandant of the Marine Corps in meeting those particular needs of the United States Marine Corps which are required to be provided by their respective bureaus.

(b) Be responsive to the heads of other organizations in meeting the particular needs of such organizations which are provided by the Chief of Naval Personnel and the Chief, Bureau of Medicine and Surgery.

§ 700.308 Naval Inspector General.

There is in the Office of the Chief of Naval Operations the Office of the Naval Inspector General. The Naval Inspector General, when directed, shall inquire into and report upon any matter which affects the discipline or military efficiency of the Department of the Navy; however, the Secretary of the Navy shall direct inquiry when such matters are related to the Marine Corps. He shall make such inspections, investigations, and reports as the Secretary of the Chief of Naval Operations directs. The Naval Inspector General shall periodically propose programs of inspections to the Chief of Naval Operations and shall recommend additional inspections or investigations as may appear appropriate.

§ 700.309 Commander in Chief; U.S. Atlantic Fleet.

(a) The Commander in Chief of U.S. Atlantic Fleet is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall command the U.S. Atlantic Fleet and is responsible for the administration, training, maintenance, support and readiness of the Atlantic Fleet including those forces temporarily assigned to the operational command of other commanders.

(b) The Commander in Chief U.S. Atlantic Fleet is a naval component commander of the unified command under the Commander in Chief, Atlantic.

(c) The organization of the Atlantic Fleet, the forces assigned and their employment shall be as specified by the Chief of Naval Operations except for the employment of forces assigned to the operational command of unified and specified commanders.

§ 700.310 Commander in Chief, U.S. Pacific Fleet.

(a) The Commander in Chief U.S. Pacific Fleet is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall command the U.S. Pacific Fleet and is responsible for the administration, training, maintenance, support and readiness of the Pacific Fleet, including those forces temporarily assigned to the operational command of other commanders.

(b) The Commander in Chief U.S. Pacific Fleet is a naval component commander of the unified command under the Commander in Chief, Pacific.

(c) The organization of the Pacific Fleet, the forces assigned and their employment shall be as specified by the Chief of Naval Operations except for the employment of forces assigned to the operational command of unified and specified commanders.

§ 700.311 Commander in Chief; U.S. Naval Forces, Europe.

(a) The Commander in Chief U.S. Naval Forces, Europe is a naval commander in chief of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall represent the Chief of Naval Operations for U.S. naval matters in the general areas of Europe, North Africa, and the Middle East. He shall command those forces assigned by the Chief of Naval Operations or by other naval commanders.

(b) The Commander in Chief U.S. Naval Forces, Europe is the naval component commander of the unified command under the Commander in Chief, U.S. European Command.

§ 700.312 Commander, Military Sealift Command.

(a) The Commander, Military Sealift Command is a naval commander of the Operating Forces of the Navy under the command of the Chief of Naval Operations. He shall provide ocean transportation for personnel and cargo of the Department of Defense (excluding that transported by units of the fleet) in accordance with policies and procedures of the Single Manager for Ocean Transportation (Secretary of the Navy) and the Secretary of Defense. He shall also operate ships in support of scientific projects and other programs for agencies or departments of the United States.

(b) The Military Sealift Command shall operate and maintain government owned ships and augment operational capability by shipping cargo and passengers on commercially operated ships, chartering ships, and exercising operational control over ships activated from National Defense Reserve Fleet to meet emergency needs.

§ 700.313 Commander, Naval Intelligence Command.

The Commander, Naval Intelligence Command, under the command of the Chief of Naval Operations, shall be responsible for directing and managing the activities of the Naval Intelligence Command to insure fulfillment of the intelligence, counterintelligence, investigative, and security requirements of the Department of the Navy.

§ 700.314 Commander, Naval Telecommunications Command.

The Commander, Naval Telecommunications Command, under the command of the Chief of Naval Operations, shall exercise overall responsibility throughout the Department of the Navy for the coordination of the provision, operation, and maintenance of adequate and secure naval communications.

[41 FR 18074, Apr. 30, 1976]

§ 700.315 Oceanographer of the Navy.

The Oceanographer of the Navy, within the Office of the Chief of Naval Operations, performs functions relating to external interfaces with national and international oceanographic organizations and bodies.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.316 Commander, Naval Oceanography Command.

The Commander, Naval Oceanography Command, under the command of the Chief of Naval Operations, shall be responsible for the management of assigned oceanographic, mapping, charting, geodetic and meteorological activities and efforts and shall provide technical guidance in such matters throughout the Department of the Navy.

[45 FR 80278, Dec. 4, 1980]

§ 700.317 Commander, Naval Security Group Command.

The Commander, Naval Security Group Command, under the command of the Chief of Naval Operations, shall be responsible for the provision, operation, and maintenance of an adequate Naval Security Group and shall perform cryptologic and related functions.

§ 700.318 Chief of Naval Education and Training.

The Chief of Naval Education and Training, under the command of the Chief of Naval Operations, shall be responsible for the training of Navy personnel, other than training assigned by the Chief of Naval Operations to other authorities, and for the training of Marine Corps aviation personnel.

[41 FR 18074, Apr. 30, 1976]

§ 700.319 Chief of Naval Reserve.

The Chief of Naval Reserve, under the command of the Chief of Naval Operations, shall be responsible for the administration of Naval Reserve programs, the management of Naval Reserve resources, and for logistic support of the Marine Corps air program.

§ 700.320 Commandants of Naval Districts.

(a) The Commandants of Naval Districts, under the command of the Chief of Naval Operations shall represent the Secretary of the Navy and the Chief of Naval Operations in such matters as may be assigned; to exercise area coordination authority and supervise and direct the effective execution of assigned area coordination responsibilities over all naval shore activities and personnel in the Naval Service in the naval district; to exercise command of assigned naval shore activities; to coordinate fleet support matters as assigned by Fleet Commanders in Chief; and to coordinate public affairs matters throughout the naval district and to perform such other functions as may be directed by the Chief of Naval Operations.

[41 FR 18074, Apr. 30, 1976, and 45 FR 80278, Dec. 4, 1980]

§ 700.321 President, Board of Inspection and Survey.

The President of the Board of Inspection and Survey, assisted by such other officers and such permanent and semipermanent sub-boards as may be designated by the Secretary of the Navy, shall:

(a) Conduct acceptance trials and inspections of all ships and service craft prior to acceptance for naval service.

(b) Conduct acceptance trials and inspections on one or more aircraft of each type or model prior to final acceptance for naval service.

(c) Examine at least once every three years, if practicable, each naval ship to determine its material condition and, if found unfit for continued service, report to higher authority.

(d) Perform such other inspections and trials of naval ships, service craft, and aircraft as may be directed by the Chief of Naval Operations.

Subpart D—The Commandant of the Marine Corps

§ 700.401 Senior officer of the Marine Corps.

(a) The Commandant of the Marine Corps is the senior officer of the United States Marine Corps.

(b) The Commandant of the Marine Corps is the Marine Corps member of the Joint Chiefs of Staff and is responsible, in coordination with the Chief of Naval Operations, for keeping the Secretary of the Navy fully informed on matters considered or acted upon by the Joint Chiefs of Staff. In this capacity, he is responsible, under the President and the Secretary of Defense, for duties external to the Department of the Navy, as prescribed by law.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80278, Dec. 4, 1980]

§ 700.402 Succession to duties.

The Assistant Commandant of the Marine Corps, and then the officers of the Marine Corps, not restricted in the performance of duty, on duty at the headquarters of the Marine Corps in the order of their seniority, shall, unless otherwise directed by the President, perform the duties of the Commandant of the Marine Corps during his absence, disability, or in the event of a temporary vacancy in that office.

§ 700.403 Authority and responsibilities.

(a) The Commandant of the Marine Corps, under the direction of the Secretary of the Navy, shall command the United States Marine Corps, which shall include Headquarters, United States Marine Corps; the Operating Forces of the Marine Corps; Marine Corps Supporting Establishments and the Marine Corps Reserve.

(b) The Commandant of the Marine Corps advises the Secretary of the Navy on matters pertaining to the Marine Corps. He is directly responsible to the Secretary for the administration, discipline, internal organization, training, requirements, efficiency, and readiness of the Marine Corps; for the operation of the Marine Corps material support system; and the total performance of the Marine Corps. He shall command such shore activities as may be assigned by the Secretary, and is responsible to the Secretary for the utilization of resources by and the operating efficiency of all activities under his command. When performing these functions, the Commandant is not a part of the command structure of the Chief of Naval Operations. There must, however, be a close cooperative relationship between the Chief of Naval Operations, as the senior military officer of the Department of the Navy, and the Commandant, as the one having command responsibility over the Marine Corps.

(c) The Commandant of the Marine Corps is directly responsible to the Chief of Naval Operations for the organization, training, and readiness of those elements of the Operating Forces of the Marine Corps assigned to the Operating Forces of the Navy. Such Marine Corps forces, when so assigned, are subject to the command exercised by the Chief of Naval Operations over the Operating Forces of the Navy. Likewise, members or organizations of the Navy, when assigned to the Marine Corps, are subject to the command of the Commandant of the Marine Corps.

§ 700.404 Specific responsibilities.

In addition, the Commandant of the Marine Corps has the following specific responsibilities:

(a) To plan for and determine the support needs of the Marine Corps for equipment, weapons or weapons systems, materials, supplies, facilities, maintenance, and supporting services. This responsibility includes the determination of Marine Corps characteristics of equipment and material to be procured or developed, and the training required to prepare Marine Corps personnel for combat. It also includes the operation of the Marine Corps Material Support System.

(b) To budget for the Marine Corps, except as may be otherwise directed by the Secretary of the Navy.

(c) To develop, in coordination with other military services, the doctrines, tactics, and equipment employed by landing forces in amphibious operations.

(d) To formulate Marine Corps strategic plans and policies and participate in the formulation of joint and combined strategic plans and policies and related command relationships.

(e) To plan for and determine the present and future needs, both quantitative and qualitative, for personnel, including reserve personnel and civilian personnel, of the United States Marine Corps. This includes responsibility for leadership in maintaining a high degree of competence among Marine Corps officers and enlisted personnel and Marine Corps civilian personnel in necessary fields of specialization through education, training, and equal opportunities for personal advancement; and for leadership in maintaining the morale and motivation of Marine Corps personnel and the prestige of a career in the Marine Corps.

(f) To plan for and determine development requirements of the Marine Corps. To provide for the development, test, and evaluation of new weapon systems and equipment, to ensure that such are adequate and responsive to immediate and long-range objectives and are within available resources. To provide direct staff assistance to the Assistant Secretary of the Navy (Research and Development) in the direction, review, and appraisal of the overall USMC RDT&E Program.

(g) To plan for and determine the needs for health care for personnel of the Marine Corps and their dependents.

§ 700.405 Composition of the Marine Corps.

(a) The major components of the regular establishment of the Marine Corps consist principally of the Headquarters of the Marine Corps, the Operating Forces, and the Supporting Establishment. In addition, there is another element of the Marine Corps, the Marine Corps Reserve.

(b) The Operating Forces of the Marine Corps include the Fleet Marine Forces, detachments afloat, and security forces. There are two Fleet Marine Forces: Fleet Marine Force, Atlantic, and Fleet Marine Force, Pacific. These Fleet Marine Forces are assigned to, and are integral to, the U.S. fleets as part of the Operating Forces of the Navy.

(c) The Supporting Establishment includes those Marine Corps facilities, such as Marine Corps schools, recruit depots, supply installations, bases, barracks, air stations and other miscellaneous small activities which train, maintain, and support the Operating Forces of the Marine Corps.

(d) The Marine Corps Reserve has as its mission to provide a trained force of qualified officers and enlisted personnel to be available for active duty in the U.S. Marine Corps in time of war or national emergency.

§ 700.406 Relationships between the Commandant of the Marine Corps and the Chief of Naval Material.

Formal operating relationships with respect to the efforts of determining needs and providing support between the Commandant of the Marine Corps and his organization and the Chief of Naval Material and his organization shall be governed by the following principles:

(a) The Commandant of the Marine Corps shall express to the Chief of Naval Material those Marine Corps material needs which are to be provided by the Naval Material Command. With respect to the development of material items, the Commandant of the Marine Corps shall specify the military performance required to meet Marine Corps needs.

(b) The Chief of Naval Material shall advise the Commandant of the Marine Corps as to the economic and technological feasibility of meeting such needs, and shall keep the Commandant informed of new capabilities to meet the needs of the Marine Corps which may or may not have been previously expressed. With respect to the development of material items, the Chief of Naval Material shall determine the technical effort necessary to satisfy the needs of the Marine Corps.

(c) The Commandant of the Marine Corps shall select the work to be done to satisfy the needs of the Marine Corps, based upon feasibility data and current estimates of the worth of a particular need in relation to other desirable needs, including, where necessary, the curtailment or cancellation of work already in progress in favor of work which offers greater promise or greater military worth.

(d) The Chief of Naval Material shall exercise appropriate supervision over accomplishment of the work selected, and shall insure that resources available to him are efficiently utilized in meeting Marine Corps needs.

(e) Work being accomplished shall be reviewed concurrently by the Commandant of the Marine Corps from the viewpoint of readiness and military worth, and by the Chief of Naval Material from the viewpoint of progress and the efficient utilization of resources available to him.

§ 700.407 Serving with the Army by order of the President.

(a) When Marine Corps units are, by order of the President, detached for service with the Army, the Commandant of the Marine Corps is, for the time that the Marine Corps units are thus detached and for the purposes of administering the affairs of such units, responsible to the Secretary of the Army. The Commandant of the Marine Corps shall retain such control and jurisdiction over said detached forces as will enable him to make the necessary transfers of officers and men from and to the commands, and to exercise general supervision over all expenditures and supplies needed for the support of the Marine Corps forces so detached. He shall be responsible to the Secretary of the Army for the general efficiency and discipline of such units of the Marine Corps as are detached for service with the Army.

(b) Official correspondence which relates exclusively to the routine business of the Marine Corps and does not involve questions of administrative responsibility under the supervision of the commanding officer of the combined forces, and which is not a matter of a military nature pertaining to an individual requiring the action of said commanding officer, shall be forwarded direct between the Headquarters of the Marine Corps and the senior Marine officer serving with the detached forces.

(c) All official correspondence regarding the personnel of the Marine Corps units on duty with the Army shall be addressed to the proper representative of the Marine Corps and forwarded via the Adjutant General of the Army.

Subpart E—The United States Coast Guard (When Operating As a Service of the Navy)

§ 700.501 Relationship and operation as a service in the Navy.

(a) Upon declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall be subject to the orders of the Secretary of the Navy. While so operating as a service in the Navy and to the extent practicable Coast Guard operations shall be integrated and uniform with Navy operations.

(b) Whenever the Coast Guard operates as a service in the Navy:

(1) Applicable appropriations of the Coast Guard to cover expenses shall be available for transfer to the Department of the Navy and supplemented, as required, from applicable appropriations of the Department of the Navy.

(2) Personnel of the Coast Guard shall be eligible to receive gratuities, medals, and other insignia of honor on the same basis as personnel in the naval service or serving in any capacity with the Navy.

§ 700.502 Commandant of the Coast Guard.

(a) The Commandant of the Coast Guard is the senior officer of the United States Coast Guard.

(b) When reporting in accordance with Section 3, Title 14, U.S. Code to the Secretary of the Navy, the Commandant of the Coast Guard will further report to the Chief of Naval Operations for military functions. The Chief of Naval Operations shall represent the Coast Guard as a member of the Joint Chiefs of Staff.

§ 700.503 Duties and responsibilities.

In exercising command over the Coast Guard while operating as a service of the Navy, the Commandant shall:

(a) Organize, train, prepare and maintain the readiness of the Coast Guard to function as a specialized service in the Navy for the performance of military missions, as directed.

(b) Plan for and determine the present and future needs of the Coast Guard, both quantitative and qualitative, for personnel, including reserve personnel.

(c) Budget for the Coast Guard, except as may be otherwise directed by the Secretary of the Navy.

(d) Plan for and determine the support needs of the Coast Guard for equipment, materials, weapons or weapons systems, supplies, facilities, maintenance, and supporting services.

(e) Exercise essential military administration of the Coast Guard. This includes, but is not limited to, such matters as security, discipline, intelligence, communications, personnel records and accounting conforming, as practicable, to Navy procedures.

(f) Enforce or assist in enforcing Federal laws on the high seas and on waters subject to the jurisdiction of the United States.

(g) Administer, promulgate and enforce regulations for the promotion of safety of life and property on the high seas and on waters subject to the jurisdiction of the United States. This applies to those matters not specifically delegated by law to some other executive department.

(h) Develop, establish, maintain and operate, with due regard to the requirements of national defense, aids to maritime navigation, ice breaking facilities, and rescue facilities for the promotion of safety on and over the high seas and waters subject to the jurisdiction of the United States.

(i) Engage in oceanographic research on the high seas and in waters subject to the jurisdiction of the United States in coordination with the Office of the Oceanographer of the Navy.

(j) Continue in effect under the Secretary of the Navy those other functions, powers and duties vested in him by appropriate orders and regulations of the Secretary of Transportation on the day prior to the effective date of transfer of the Coast Guard to the Department of the Navy until specifically modified or terminated by the Secretary of the Navy.

Subpart F—Commanders in Chief and Other Commanders

§ 700.601 Titles of commanders.

(a) The commander of a principal organization of the Operating Forces of the Navy, as determined by the Chief of Naval Operations, or the officer who has succeeded to such command as provided elsewhere in these regulations, shall have the title "Commander in Chief." The name of the organization under his command shall be added to form his official title.

(b) The commander of each other organization of units of the Operating Forces of the Navy, or organization of units of shore activities, shall have the title "Commander," "Commandant," "Commanding General," or other appropriate title. The name of the organization under his command shall be added to form his official title.

§ 700.602 Responsibility and authority of a commander.

(a) A commander shall be responsible for the satisfactory accomplishment of the mission and duties assigned to his command. His authority shall be commensurate with his responsibilities. Normally, he shall exercise authority through his immediate subordinate commanders; but he may communicate directly with any of his subordinates.

(b) A commander shall insure that subordinate commands are fully aware of the importance of strong, dynamic leadership and its relationship to the overall efficiency and readiness of naval forces. A commander shall exercise positive leadership and actively develop the highest qualities of leadership in persons with positions of authority and responsibility throughout his command.

(c) Subject to orders of higher authority, a commander shall issue such regulations and instructions as may be necessary for the proper administration and operation of his command.

(d) A commander shall hold the same relationship to his flagship, or to a shore activity of his command in which his headquarters may be located, in regard to its internal administration and discipline, as to any other ship or shore activity of his command.

§ 700.603 To announce assumption of command.

Upon assuming command, a commander shall so advise appropriate superiors, and the units of his command. When appropriate to his command he shall also advise the senior commanders of other United States armed services and officials of other Federal agencies and foreign governments located within the area encompassed by his command, concerning his assumption of command.

§ 700.604 Readiness.

A commander shall take all practicable steps to maintain his command in a state of readiness to perform its mission. In conformity with the orders and policies of higher authority, he shall:

(a) Organize the forces and resources under his command and assign duties to his principal subordinate commanders.

(b) Prepare plans for the employment of his forces to meet existing and foreseeable situations.

(c) Collaborate with the commanders of other United States armed services and with appropriate officials of other Federal agencies and foreign governments located within the area encompassed by his command.

(d) Maintain effective intelligence and keep himself informed of the political and military aspects of the national and international situation.

(e) Make, or cause to be made, such inspections as necessary to ensure the readiness, effectiveness, and efficiency of the components of his command.

§ 700.605 Observance of international law.

At all times a commander shall observe, and require his command to observe, the principles of international law. Where necessary to fulfillment of this responsibility, a departure from other provisions of Navy Regulations is authorized.

Subpart G—The Commanding Officer

§ 700.701 Applicability.

In addition to commanding officers, the provisions of this chapter shall apply, where pertinent, to aircraft commanders, officers in charge (including warrant officers and petty officers when so detailed) and those persons standing the command duty.

§ 700.702 Responsibility.

(a) The responsibility of the commanding officer for his command is absolute, except when, and to the extent, relieved therefrom by competent authority, or as provided otherwise in these regulations. The authority of the commanding officer is commensurate with his responsibility. While he may, at his discretion, and when not contrary to law or regulations, delegate authority to his subordinates for the execution of details, such delegation of authority shall in no way relieve the commanding officer of his continued responsibility for the safety, well-being, and efficiency of his entire command.

(b) A commanding officer who departs from his orders or instructions, or takes official action which is not in accordance with such orders or instructions, does so upon his own responsibility and shall report immediately the circumstances to the officer from whom the prior orders or instructions were received.

(c) The commanding officer shall be responsible for economy within his command. To this end he shall require from his subordinates a rigid compliance with the regulations governing the receipt, accounting, and expenditure of public money and materials, and the implementation of improved management techniques and procedures.

(d) The commanding officer and his subordinates shall exercise leadership through personal example, moral responsibility, and judicious attention to the welfare of persons under their control or supervision. Such leadership shall be exercised in order to achieve a positive, dominant influence on the performance of persons in the Department of the Navy.

§ 700.703 [Reserved]

§ 700.704 Organization of commands.

All commands and other activities of the Department of the Navy shall be organized and administered in accordance with law, the Navy Regulations, and the orders of competent authority, and all orders and instructions of the commanding officer shall be in accordance therewith.

§§ 700.705—700.708 [Reserved]

§ 700.709 Unauthorized persons on board.

The commanding officer shall satisfy himself that there is no unauthorized person on board before proceeding to sea or commencing a flight.

§ 700.710 Control of passengers.

(a) Control of passage in and protracted visits to aircraft and ships of the Navy by all persons, within or without the Department of the Navy, shall be exercised by the Chief of Naval Operations.

(b) Nothing in this article shall be interpreted as prohibiting the senior officer present from authorizing the passage in ships and aircraft of the Navy by such persons as he judges necessary in the public interest or in the interest of humanity. The senior officer present shall report the circumstances to the Chief of Naval Operations when he gives such authorization.

§ 700.711 Authority over passengers.

Except as otherwise provided in these regulations or in orders from competent authority, all passengers in a ship or aircraft of the naval service are subject to the authority of the commanding officer and shall conform to the internal regulations and routine of the ship or aircraft. The commanding officer of such ship or aircraft shall take no disciplinary action against a passenger not in the naval service, other than that authorized by law; but he may, when he deems such action to be necessary for the safety of the ship or aircraft or of any persons embarked, subject a passenger not in the naval service to such restraint as the circumstances require until such time as delivery to the proper authorities is possible. A report of the matter shall be made to an appropriate superior of the passenger.

§ 700.712 [Reserved]

§ 700.713 Person found under incriminating circumstances.

(a) The commanding officer shall keep under restraint or surveillance, as necessary, any person not in the armed services of the United States who is found under incriminating or irregular circumstances within the command, and shall immediately initiate an investigation.

(b) Should an investigation indicate that such person is not a fugitive from justice or has not committed or attempted to commit an offense, he shall be released at the earliest opportunity, except:

(1) If not a citizen of the United States, and the place of release is under the jurisdiction of the United States, the nearest federal immigration authorities shall be notified as to the time and place of release sufficiently in advance to permit them to take such steps as they deem appropriate.

(2) Such persons shall not be released in territory not under the jurisdiction of the United States without first obtaining the consent of the proper foreign authorities, except where the investigation shows that he entered the command from territory of the foreign state, or that he is a citizen or subject of that state.

(c) If the investigation indicates that such person has committed or attempted to commit an offense punishable under the authority of the commanding officer, the latter shall take such action as he deems necessary.

(d) If the investigation indicates that such a person is a fugitive from justice, or has committed or attempted to commit an offense which requires actions beyond the authority of the commanding officer, he shall, at the first opportunity, deliver such person, with full descriptive data, fingerprints, and a statement of the circumstances to the proper civil authorities.

(e) A report shall be made promptly to the Secretary of the Navy, in all cases under paragraph 4 of this article, and in other cases where appropriate.

[39 FR 7135, Feb. 25, 1974, as amended at 41 FR 21775, May 28, 1976]

§ 700.714 Rules for visits.

(a) Commanding officers are responsible for the control of visitors to their commands and shall comply with the relevant provisions of the Department of the Navy Security Manual for Classified Information and other pertinent directives.

(b) Commanding officers shall take such measures and impose restrictions on visitors as necessary to safeguard the classified material under their jurisdiction. Arrangements for general visiting shall always be based on the assumption that foreign agents will be among the visitors.

(c) Commanding officers and others officially concerned shall exercise reasonable care to safeguard the persons and property of visitors to naval activities as well as taking those necessary precautions to safeguard the persons and property within his command.

§ 700.715 Dealers, tradesmen, and agents.

(a) In general, dealers or tradesmen or their agents shall not be admitted within a command, except as authorized by the commanding officer:

(1) To conduct public business.

(2) To transact specific private business with individuals at the request of the latter.

(3) To furnish services and supplies which are necessary and are not otherwise, or are insufficiently, available to the personnel of the command.

(b) Personal commercial solicitation and the conduct of commercial transactions are governed by policies of Department of Defense.

§ 700.716 Marriages on board.

The commanding officer shall not perform a marriage ceremony on board his ship or aircraft. He shall not permit a marriage ceremony to be performed on board when the ship or aircraft is outside the territory of the United States, except:

(a) In accordance with local laws and the laws of the state, territory, or district in which the parties are domiciled, and

(b) In the presence of a diplomatic or consular official of the United States, who has consented to issue the certificates and make the returns required by the consular regulations.

§ 700.717 Postal matters.

Commanding officers shall ensure that mail and postal funds are administered in accordance with instructions issued by the Postmaster General and approved for the naval service by the Chief of Naval Operations, and instructions issued by the Chief of Naval Operations or the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate; and that postal clerks or other persons authorized to handle mail perform their duties strictly in accordance with those instructions.

§§ 700.718—700.719 [Reserved]

§ 700.720 Deaths.

The commanding officer, in the event of death of any person within his command, shall ensure that the cause of death and the circumstances under which death occurred are established, and the appropriate casualty report is submitted.

§ 700.721 The American National Red Cross.

(a) Pursuant to the request of the Secretary of the Navy and subject to such instructions as he may issue, the American National Red Cross is authorized to conduct a program of welfare, including social, financial, and medical and dental aid, for naval personnel; to assist in matters pertaining to prisoners of war; and to provide such other services as are appropriate functions for the Red Cross. The American National Red Cross is the only volunteer society authorized by the Government to render medical and dental aid to the armed forces of the United States. Other organizations desiring to render medical and dental aid may do so only through the Red Cross.

(b) Requests for Red Cross services shall be made to the Chief of Naval Personnel or the Commandant of the Marine Corps or, in the case of medical services, to the Chief, Bureau of Medicine and Surgery.

(c) Activities and personnel of the American National Red Cross in areas subject to naval jurisdiction shall conform to such administrative regulations as may be prescribed by appropriate naval authority.

(d) Red Cross personnel shall be considered to have the status of commissioned officers, subject to such restrictions as may be imposed by the Chief of Naval Personnel or the Commandant of the Marine Corps.

§§ 700.722—700.723 [Reserved]

§ 700.724 Maintenance of Logs.

(a) A deck log and an engineering log shall be maintained by each ship in commission, and by such other ships and craft as may be designated by the Chief of Naval Operations.

(b) A compass record shall be maintained as an adjunct to the deck log. An engineer's bell book shall be maintained as an adjunct to the engineering log.

(c) The Chief of Naval Operations shall prescribe regulations governing the contents and preparation of the deck and engineering logs and adjunct records.

[41 FR 18074, Apr. 30, 1976]

§ 700.725 Status of Logs.

The deck log, the engineering log, the compass record, and the engineer's bell book shall each constitute an official record of the command.

[41 FR 18074, Apr. 30, 1976]

§ 700.726 Records.

The commanding officer shall require that records relative to personnel, material, and operations as required by current instructions are maintained properly by those responsible therefor.

§§ 700.727—700.728 [Reserved]

§ 700.729 Delivery of personnel to civil authorities and service of subpoena or other process.

(a) Commanding officers or other persons in authority shall not deliver any person in the naval service to civil authorities except as provided by the Manual of the Judge Advocate General.

(b) Commanding officers are authorized to permit the service of subpoena on other process as provided by the Manual of the Judge Advocate General.

§§ 700.730—700.732 [Reserved]

§ 700.733 Responsibility of a master of an in-service ship of the Military Sealift Command.

In an in-service ship of the Military Sealift Command, the master is responsible for the safety of his ship and all persons on board. He is responsible for the safe navigation and technical operation of his ship and has paramount authority over all persons on board. The master is responsible for the preparation of the abandoned ship bill and has exclusive authority to order the ship abandoned. He has full authority to enforce appropriate laws of the United States and all applicable orders and regulations of the Navy, Military Sealift Command, and the Office of Personnel Management.

[39 FR 7135, Feb. 25, 1974, as amended at 47 FR 28370, June 30, 1982]

§ 700.734 Relations with merchant seamen.

When in foreign waters, the commanding officer, with the approval of the senior officer present, may receive on board as supernumeraries for rations and passage:

(a) Distressed seamen of the United States for passage to the United States, provided they bind themselves to be amenable in all respects to Navy Regulations.

(b) As prisoners, seamen from merchant vessels of the United States, provided that the witnesses necessary to substantiate the charges against them are received, or adequate means adopted to ensure the presence of such witnesses on arrival of the prisoners at the place where they are to be delivered to the civil authorities.

§ 700.735 [Reserved]

§ 700.736 Physical security.

(a) The commanding officer shall take action to protect and maintain the security of the command from the dangers of attack, sabotage or other actions of subversive or militant groups or of any person with intent to do harm.

(b) The commanding officer shall take action to protect and maintain the security of the command against dangers from fire, windstorms, or other acts of nature.

§ 700.737 Effectiveness for service.

The commanding officer shall:

(a) Exert every effort to maintain his command in a state of maximum effectiveness for war or other service consistent with the degree of readiness as may be prescribed by proper authority. Effectiveness for service is directly related to state of personnel and material readiness.

(b) Make himself aware of the progress of any repairs, the status of spares, repair parts and other components, personnel readiness and other factors or conditions that could lessen the effectiveness of his command. When the effectiveness is lessened appreciably it shall be reported to appropriate superiors.

§§ 700.738—700.739 [Reserved]

§ 700.740 Search by foreign authorities.

(a) The commanding officer shall not permit a ship under his command to be searched on any pretense whatsoever by any person representing a foreign state, nor permit any of the personnel within the confines of his command to be removed from the command by such person, so long as he has the capacity to repel such act. If force should be exerted to compel submission, he is to resist that force to the utmost of his power.

(b) Except as may be provided by international agreement, the commanding officer of a shore activity shall not permit his command to be searched by any person representing a foreign state, nor permit any of the personnel within the confines of his command to be removed from the command by such person, so long as he has the power to resist.

§§ 700.741—700.746 [Reserved]

§ 700.747 Status of boats.

(a) Boats shall be regarded in all matters concerning the rights, privileges, and comity of nations as part of the ship or aircraft to which they belong.

(b) In ports where war, insurrection or armed conflict exists or threatens, the commanding officer shall:

(1) Require that boats away from the ship or aircraft have some appropriate and competent person in charge.

(2) See that steps are taken to make their nationality evident at all times.

§ 700.748 [Reserved]

§ 700.749 Work, facilities, supplies, or services for other Government departments, State or local governments, foreign governments, private parties and morale, welfare, and recreational activities.

(a) Work may be done for or facilities, supplies, or services furnished to departments and agencies of the Federal and State governments, local governments, foreign governments, private parties, and morale, welfare, and recreational activities with the approval of a commanding officer provided:

(1) The cost does not exceed limitations the Secretary of the Navy may approve or specify; and,

(2) In the case of private parties, it is in the interest of the government to do so and there is no issue of competition with private industry; and,

(3) In the case of foreign governments a disqualification of a government has not been issued for the benefits of this article.

(b) Work shall not be started nor facilities, supplies, or services furnished, morale, welfare, and recreational activities not classified as instrumentalities of the United States, or state or local governments or private parties until funds to cover the estimated cost have been deposited with the commanding officer or unless otherwise provided by law.

(c) Work shall not be started nor facilities, supplies, or services furnished other Federal Government departments and agencies, or expenses charged to non-appropriated funds of morale, welfare, and recreational activities classified as instrumentalities of the United States until reimbursable funding arrangements have been made.

(d) Work, facilities, supplies, or services furnished non-appropriated fund activities classified as instrumentalities of the United States in the Navy Comptroller Manual shall be funded in accordance with regulations of the Comptroller of the Navy.

(e) Supplies or services may be furnished to naval vessels and military aircraft of friendly foreign governments (unless otherwise provided by law or international treaty or agreement):

(1) On a reimbursable basis without an advancement of funds, when in the best interest of the United States;

(i) Routine port services (including pilotage, tugs, garbage removal, linehandling, and utilities) in territorial waters or waters under United States control,

(ii) Routine airport services (including air traffic control, parking, servicing, use of runways),

(iii) Miscellaneous supplies (including fuel, provisions, spare parts, and general stores) but not ammunition. Supplies are subject to approval of the cognizant fleet or force commanders when provided overseas,

(iv) With approval of Chief of Naval Operations in each instance, overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to vessels and military aircraft.

(2) Routine port and airport services may be furnished at no cost to the foreign government concerned where such services are provided by persons of the naval service without direct cost to the Department of the Navy.

(f) In cases of emergency involving possible loss of life or valuable property, work may be started or facilities furnished prior to authorization, or provision for payment, but in all such cases a detailed report of the facts and circumstances shall be made promptly to the Secretary of the Navy or the appropriate authority.

(g) Charges and accounting for any work, supplies, or services shall be as prescribed in the Navy Comptroller Manual.

§§ 700.750—700.751 [Reserved]

§ 700.752 Responsibility for safety of ships and craft at a naval station or shipyard.

(a) The commanding officer of a naval station or shipyard shall be responsible for the care and safety of all ships and craft at such station or shipyard not under a commanding officer or assigned to another authority, and for any damage that may be done by or to them. In addition, the commanding officer of a naval station or shipyard shall be responsible for the safe execution of work performed by that activity upon any ship located at the activity.

(b) It shall be the responsibility of the commanding officer of a ship in commission which is undergoing overhaul, or which is otherwise immobilized at a naval station or shipyard, to request such services as are necessary to ensure the safety of the ship. The commanding officer of the naval station or shipyard shall be responsible for providing requested services in a timely and adequate manner.

(c) When a ship or craft not under her own power is being moved by direction of the commanding officer of a naval station or shipyard, that officer shall be responsible for any damage that may result therefrom; the pilot or other person designated for the purpose shall be in direct charge of such movement, and all persons on board shall cooperate with and assist the pilot as necessary. Responsibility for such actions in a private shipyard will be assigned by contract to the contractor.

(d) When a ship operating under her own power is being drydocked, the commanding officer shall be fully responsible for the safety of his ship until the extremity of the ship first to enter the drydock reaches the dock sill and the ship is pointed fair for entering the drydock. The docking officer shall then take charge and complete the docking, remaining in charge until the ship has been properly landed, bilge blocks hauled, and the dock pumped down. In undocking, the docking officer shall assume charge when flooding the dock preparatory to undocking is started, and shall remain in charge until the extremity of the ship last to leave the dock clears the sill, and the ship is pointed fair for leaving the drydock, when the ship's commanding officer shall assume responsibility for the safety and control of the ship.

(e) When a naval ship is to be drydocked in a private shipyard under a contract being administered by a supervisor of shipbuilding, the responsibilities of the commanding officer are the same as in the case of drydocking in a naval shipyard. The responsibilities for the safety of the actual drydocking, normally assigned to the commanding officer of a naval shipyard through his docking officer, will be assigned by contract to the contractor. The supervisor of shipbuilding is responsible, however, for ensuring that the contractor's facilities, methods, operations, and qualifications meet the standards of efficiency and safety prescribed by Navy directives.

(f) If the ship is elsewhere than at a naval station or shipyard, the relationship between the Commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the commanding officer and the commanding officer of a naval station or shipyard as specified in this article.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80279, Dec. 4, 1980]

§ 700.753 Ships and craft in drydock.

(a) The commanding officer of a ship in drydock shall be responsible for effecting adequate closure, during such periods as they will be unattended, of all openings in the ship's bottom upon which no work is being undertaken by the docking activity. The commanding officer of the docking activity shall be responsible for the closing, at the end of working hours, of all valves and other openings in the ship's bottom upon which work is being undertaken by the docking activity, when such closing is practicable.

(b) Prior to undocking, the commanding officer of a ship shall report to the docking officer any material changes in the amount and location of weights on board which have been made by the ship's force while in dock, and shall ensure, and so report, that all sea valves and other openings in the ship's bottom are properly closed. The level of water in the dock shall not be permitted to rise above the keel blocks prior to receipt of this report. The above valves and openings shall be tended during flooding of the dock.

(c) When a ship or craft, not in commission, is in a naval drydock, the provisions of this article shall apply, except that the commanding officer of the docking activity or his representative shall act in the capacity of the commanding officer.

(d) When a naval ship or craft is in drydock in a private shipyard, responsibility for actions normally assigned by the commanding officer of the docking activity will be assigned by contract to the contractor.

[39 FR 7135, Feb. 25, 1974, as amended at 45 FR 80279, Dec. 4, 1980]

§ 700.754 Pilotage.

(a) The commanding officer shall:

(1) Pilot the ship under all ordinary circumstances, but he may employ pilots whenever in his judgment such employment is prudent.

(2) Not call a pilot on board until the ship is ready to proceed.

(3) Not retain a pilot on board after the ship has reached her destination or point where pilot is no longer required.

(4) Give preference to licensed pilots.

(5) Pay pilots no more than the local rates.

(b) A pilot is merely an adviser to the commanding officer. His presence on board shall not relieve the commanding officer or any of his subordinates from their responsibility for the proper performance of the duties with which they may be charged concerning the navigation and handling of the ship. For an exception to the provisions of this paragraph, see "Rules and Regulations Covering Navigation of the Panama Canal and Adjacent Waters," which directs that the pilot assigned to a vessel in those waters shall have control of the navigation and movement of the vessel. Also see the provisions of these regulations concerning the navigation of ships at a naval shipyard or station, or in entering or leaving drydock.

§ 700.755 Safe navigation and regulations governing operation of ships and aircraft.

(a) The commanding officer is responsible for the safe navigation of his ship or aircraft except as prescribed otherwise in these regulations for ships at a naval shipyard or station in drydock, or in the Panama Canal. In time of war or armed conflict, or in exercises simulating war or armed conflict, competent authority may modify the use of lights or other safeguards required by law to prevent collisions at sea, in port, or in the air. In exercises, such modifications will be employed only when ships or aircraft clearly will not be hazarded.

(b) Professional standards and regulations governing ship handling, safe navigation, safe anchoring and related operational matters shall be promulgated by the Chief of Naval Operations.

(c) Professional standards and regulations governing the operation of naval aircraft and related matters shall be promulgated by the Chief of Naval Operations or the Commandant of the Marine Corps as appropriate.

§ 700.756 Duties of the prospective commanding officer of a ship.

(a) Except as may be prescribed by the Chief of Naval Operations, the prospective commanding officer of a ship not yet commissioned shall have no independent authority over the preparation of the ship for service by virtue of his assignment to such duty, until the ship is commissioned and transferred to his command. As the prospective commanding officer, he shall:

(1) Procure from the commander of the naval shipyard or the supervisor of shipbuilding the general arrangement plans of the ship, and all the

pertinent information relative to the general condition of the ship and the work being undertaken on the hull, machinery, and equipment, upon reporting for duty.

(2) Inspect the ship as soon after reporting for duty as practicable, and frequently thereafter, in order to keep himself informed of the state of her preparation for service. If, during the course of these inspections, he notes an unsafe or potentially unsafe condition, he shall report such condition to the commander of the naval shipyard or the supervisor of shipbuilding and to his superior for resolution.

(3) Keep himself informed as to the progress of the work being done, including tests of equipment, and make such recommendations to the commander of the naval shipyard or the supervisor of shipbuilding as he deems appropriate.

(4) Ensure that requisitions are submitted for articles to outfit the ship which are not otherwise being provided.

(5) Prepare the organization of the ship.

(6) Make such reports as may be required by higher authority, and include therein a statement of any deficiency in material or personnel.

(b) If the prospective commanding officer does not consider the ship in proper condition to be commissioned at the time the commander of the naval shipyard or the supervisor of shipbuilding signifies his intention of transferring the ship to him, he shall report that conclusion with his reasons therefor, in writing, to the commander of the naval shipyard or the supervisor of shipbuilding and to the appropriate higher authority.

(c) If the ship is elsewhere than at a naval shipyard, the relationship between the prospective commanding officer and the supervisor of shipbuilding, or other appropriate official, shall be the same as that between the prospective commanding officer and the commander of a naval shipyard as specified in this article.

§ 700.757 Authority of the commanding officer or prospective commanding officer of a naval nuclear powered ship.

The Chief of Naval Operations shall be responsible for providing the commanding officer or prospective commanding officer of a naval nuclear powered ship with the authority and direction necessary to carry out his responsibilities for the safety of the ship and crew, and the health and safety of the general public in surrounding area.

§ 700.758 Inspection incident to commissioning of ships.

When a ship is to be commissioned, the authority designated to place such ship in commission shall, just prior to commissioning, cause an inspection to be made to determine the cleanliness and readiness of the ship to receive its crew and outfit. In the case of the delivery of a ship by a contractor, the above inspection shall precede acceptance of the ship. A copy of the report of this inspection shall be furnished the officer detailed to command the ship and to appropriate commands, bureaus or offices.

§§ 700.759—700.762 [Reserved]

§ 700.763 Quarantine.

(a) The commanding officer or aircraft commander of a ship or aircraft shall comply with all quarantine regulations and restrictions, United States or foreign, for the port or area within which his ship or aircraft is located.

(b) Whether or not liable to quarantine, the commanding officer shall afford every facility to visiting health officers, United States or foreign, and shall give all information required by the latter, insofar as permitted by the requirements of military security.

(c) The commanding officer shall allow no intercourse with a port or area or with other ships or aircraft until he has consulted local health authorities when:

(1) Doubt exists as to the sanitary regulations or health conditions of the port or area.

(2) A quarantine condition exists aboard his ship or aircraft.

(3) Coming from a suspected port or area, or one actually under quarantine.

(d) No concealment shall be made of any circumstance that may subject a ship or aircraft of the Navy to quarantine.

(e) Should there appear at any time on board a ship or aircraft conditions which present a hazard of introduction of a communicable disease outside the ship or aircraft, the commanding officer or aircraft commander shall at once report the fact to the senior officer present, to other appropriate higher authorities and, if in port, to the health authorities having quarantine jurisdiction. He shall prevent all contracts likely to spread disease until pratique is received. The commanding officer of a ship in port shall hoist the appropriate signal.

§ 700.764 Customs and immigration inspections.

(a) The commanding officer or aircraft commander shall facilitate any proper examination which it may be the duty of a customs officer or an immigration officer of the United States to make on board the ship or aircraft under his command. He shall not permit a foreign customs officer or an immigation officer to make any examination whatsoever, except as hereinafter provided, on board the ship, aircraft, or boats under his command.

(b) When a ship or aircraft of the Navy or a public vessel manned by naval personnel and operating under the direction of the Department of the Navy is carrying cargo for private commercial account, such cargo shall be subject to the local customs regulations of the port, domestic or foreign, in which the ship or aircraft may be, and in all matters relating to such cargo, the procedure prescribed for private merchant vessels and aircraft shall be followed. Government-owned stores or cargo in such ship or aircraft not landed nor intended to be landed nor in any manner trafficked in, are, by the established precedent of international courtesy, exempt from customs duties, but a declaration of such stores or cargo, when required by local customs regulations, shall be made. Commanding officers shall prevent, as far as possible, disputes with the local authorities in such cases, but shall protect the ship or aircraft and the Government-owned stores and cargo from any search or seizure.

(c) Upon arrival from a foreign country, at the first port of entry in United States territory, the commanding officer, or the senior officer of ships or aircraft in company, shall notify the collector of the port. Each individual aboard shall, in accordance with customs regulations, submit a list of articles purchased or otherwise acquired by him abroad. Dutiable articles shall not be landed until the customs officer has completed his inspection.

(d) Commanding officers of naval vessels and aircraft transporting United States civilian and foreign military and civilian passengers shall satisfy themselves that the passenger clearance requirements of the Immigration and Naturalization Service are complied with upon arrival at points within the jurisdiction of the United States. Clearance for such passengers by an immigration officer is necessary upon arrival from foreign ports and at the completion of movements between any of the following: Continental United States (including Alaska and Hawaii), Canal Zone, Puerto Rico, Virgin Islands, Guam, American Samoa, or other outlying places subject to United States jurisdiction. Commanding officers prior to arriving shall advise the cognizant naval or civilian port authority of the aforementioned passengers aboard and shall detain them for clearance as required by the Immigration and Naturalization Service.

(e) The provisions of this article shall not be construed to require delaying the movements of any ship or aircraft of the Navy in the performance of the assigned duty.

§ 700.765 Environmental pollution.

The commanding officer shall cooperate with local, state and other governmental authorities in the prevention, control and abatement of environmental pollution to the extent resources and operational considerations permit. He shall be aware of existing policies regarding polution control and he should recommend remedial measures when appropriate.

§§ 700.766—700.767 [Reserved]

§ 700.768 Care of ships, aircraft, vehicles and their equipment.

The commanding officer shall cause such inspections and tests to be made and procedures carried out as are prescribed by competent authority, together with such others as he deems necessary to ensure the proper preservation, repair, maintenance, and operation of any ship, aircraft, vehicle, and their equipment assigned to his command.

Subpart H—Precedence, Authority, and Command

§ 700.811 Exercise of authority.

(a) All persons in the naval service on active service, and those on the retired list with pay, and transferred members of the Fleet Reserve and the Fleet Marine Corps Reserve, are at all times subject to naval authority. While on active service they may, if not on leave of absence except as noted below, on the sick list, taken into custody, under arrest, suspended from duty, in confinement, or otherwise incapable of discharging their duties, exercise authority over all persons who are subordinate to them.

(b) A person in the naval service, although on leave, may exercise authority:

(1) When in a naval ship or aircraft and placed on duty by the commanding officer or aircraft commander.

(2) When in a ship or aircraft of the armed services of the United States, other than a naval ship or aircraft, as the commanding officer of naval personnel embarked, or when placed on duty by such officer.

(3) When senior officer at the scene of a riot or other emergency, or when placed on duty by such officer.

§§ 700.812—700.816 [Reserved]

§ 700.817 Authority of an officer who succeeds to command.

(a) An officer who succeeds to command due to incapacity, death, departure on leave, detachment without relief, or absence due to orders from competent authority of the officer detailed to command has the same authority and responsibility as the officer whom he succeeds.

(b) An officer who succeeds to command during the temporary absence of the commanding officer shall make no changes in the existing organization, and shall endeavor to have the routine and other affairs of the command carried on in the usual manner.

(c) When an officer temporarily succeeding to command signs official correspondence, the word "Acting" shall appear below his signature.

§§ 700.818—700.829 [Reserved]

§ 700.830 Authority of a sentry.

A sentry, within the limits stated in his orders, has authority over all persons on his post.

§§ 700.831—700.833 [Reserved]

§ 700.834 Orders to active service.

(a) No person who is not on active service or leave of absence shall be ordered into active service or on duty without permission of the Commandant of the Marine Corps, or the Chief of Naval Personnel, except:

(1) In the case of a person on leave of absence by the officer who granted the leave or a superior.

(2) By the senior officer present on a foreign station.

(b) In the event that the senior officer present of a foreign station issues any orders as contemplated by this article, he shall report the facts, including the reasons for issuing such orders, to the Chief of Naval Personnel or the Commandant of the Marine Corps, without delay.

(c) Retired officers of the Navy and Marine Corps may be ordered to active service, with their consent, in time of peace. In time of war or a national emergency, such retired officers may, at the discretion of the Secretary of the Navy, be ordered to active service.

Subpart I—The Senior Officer Present

SOURCE: 39 FR 7220, Feb. 25, 1974 unless otherwise noted.

§ 700.901 The senior officer present.

Unless some other officer has been so designated by competent authority, the "senior officer present" is the senior line officer of the Navy on active duty, eligible for command at sea, who is present and in command of any part of the Department of the Navy in the locality or within an area prescribed by competent authority, except where personnel of both the Navy and the Marine Corps are present on shore and the officer of the Marine Corps who is in command is senior to the senior line officer of the Navy. In such cases, the officer of the Marine Corps shall be the senior officer present on shore.

§ 700.902 [Reserved]

§ 700.903 Authority and responsibility.

At all times and places not excluded in these regulations, or in orders from competent authority, the senior officer present shall assume command and direct the movements and efforts of all persons in the Department of the Navy present, when, in his judgment, the exercise of authority for the purpose of cooperation or otherwise is necessary. He shall exercise his authority in a manner consistent with the full operational command vested in the commanders of unified or specified commands.

§ 700.904 Authority of senior officer of the Marine Corps present.

The authority and responsibility of the senior officer present are also conferred upon the senior commanding officer of the Marine Corps present with respect to those units of the Marine Corps, including Navy personnel attached, which are in the locality and not under the authority of the senior officer present.

§§ 700.905—700.921 [Reserved]

§ 700.922 Shore patrol.

(a) When liberty is granted to any considerable number of persons, except in an area that can absorb them without danger of disturbance or disorder, the senior officer present shall cause to be established, temporarily or permanently, in charge of an officer, a sufficient patrol of officers, petty officers, and noncommissioned officers to maintain order and suppress any unseemly conduct on the part of any person on liberty. The senior patrol officer shall communicate with the chief of police or other local officials and make such arrangements as may be practicable to aid the patrol in carrying out its duties properly. Such duties may include providing assistance to military personnel in relations with civil courts and police, arranging for release of service personnel from civil authorities to the parent command, and providing other services that favorably influence discipline and morale.

(b) A patrol shall not be landed in any foreign port without first obtaining the consent of the proper local officials. Tact must be used in requesting permission; and, unless it is given willingly and cordially, the patrol shall not be landed. If consent cannot be obtained, the size of liberty parties shall be held to such limits as may be necessary to render disturbances unlikely.

(c) Officers and men on patrol duty in a foreign country normally should not be armed. In the United States, officers and men may be armed as prescribed by the senior officer present.

(d) No officer or man who is a member of the shore patrol or beach guard, or is assigned in support thereof, shall partake of or indulge in any form of intoxicating beverage or other form of intoxicant while on duty, on post, or at other times prescribed by the senior patrol officer. The senior patrol officer shall ensure that the provisions of this paragraph are strictly observed and shall report promptly in writing to the senior officer present all violations of these provisions that may come to his notice. All officers and men of the patrol shall report to the senior patrol officer all violations of the provisions of this paragraph on the part of those under them.

§ 700.923 Precautions for health.

The senior officer present shall take precautions to preserve the health of the persons under his authority. He shall obtain information regarding the healthfulness of the area and medical facilities available therein and shall adopt such measures as are required by the situation.

§§ 700.924—700.934 [Reserved]

§ 700.935 Exercise of power of consul.

When upon the high seas or in any foreign port where there is no resident consul of the United States, the senior officer present afloat has the authority to exercise all powers of a consul in relation to mariners of the United States.

§§ 700.936—700.939 [Reserved]

§ 700.940 Granting of asylum and temporary refuge.

(a) If an official of the Department of the Navy is requested to provide asylum or temporary refuge, the following procedures shall apply:

(1) On the high seas or in territories under exclusive United States jurisdiction (including territorial seas, the Commonwealth of Puerto Rico, territories under United States administration, and possessions):

(i) At his request, an applicant for asylum will be received on board any naval aircraft or water-borne craft, Navy or Marine Corps activity or station.

(ii) Under no circumstances shall the person seeking asylum be surrendered to foreign jurisdiction or control, unless at the personal direction of the Secretary of the Navy or higher authority. Persons seeking political asylum should be afforded every reasonable care and protection permitted by the circumstances.

(2) In territories under foreign jurisdiction (including foreign territorial seas, territories, and possessions):

(i) Temporary refuge shall be granted for humanitarian reasons on board a naval aircraft or water borne craft, Navy or Marine Corps activity or station, only in extreme or exceptional circumstances wherein life or safety of a person is put in imminent danger, such as pursuit by a mob. When temporary refuge is granted, such protection shall be terminated only when directed by the Secretary of the Navy or higher authority.

(ii) A request by foreign authorities for return of custody of a person under the protection of temporary refuge will be reported to the CNO or Commandant of the Marine Corps. The requesting foreign authorities will be informed that the case has been referred to higher authorities for instructions.

(iii) Persons whose temporary refuge is terminated will be released to the protection of the authorities designated in the message authorizing release.

(iv) While temporary refuge can be granted in the circumstances set forth above, permanent asylum will not be granted.

(v) Foreign nationals who request assistance in forwarding requests for political asylum in the United States will be advised to apply in person at the nearest American Embassy or Consulate.

(3) The Chief of Naval Operations or Commandant of the Marine Corps, as appropriate, will be informed by the most expeditious means of all action taken pursuant to paragraphs (a)(1) and (a)(2) of this section, as well as the attendant circumstances. Telephone or voice communications will be used where possible, but must be confirmed as soon as possible with an immediate precedence message, information to the Secretary of State (for actions taken pursuant to paragraphs (a)(2)(i) and (a)(2)(v) of this section, also make the appropriate American Embassy or Consular Office an information addressee). If communication by telephone or voice is not possible, notification will be effected by an immediate precedence message, as described above. The Chief of Naval Operations or Commandant of the Marine Corps will cause the Secretary of the Navy and the Deputy Director for Operations of the National Military Command Center to be notified without delay.

(b) Personnel of the Department of the Navy shall neither directly nor indirectly invite persons to seek asylum or temporary refuge.

[41 FR 18074, Apr. 30, 1976]

Subpart J—Rights and Responsibilities of Persons in the Department of the Navy

§ 700.1115 Control of official records.

No person, without proper authority, shall withdraw official records or correspondence from the files, or destroy them, or withhold them from those persons authorized to have access to them.

§ 700.1116 Disclosure and publication of information.

(a) No person in the Department of the Navy shall convey or disclose by oral or written communication, graphic (including photographic) or other means, any classified information except as provided in the Department of the Navy Information Security Program Regulation. Additionally, no person in the Department of the Navy shall communicate or otherwise deal with foreign entities, even on an unclassified basis, when such would commit the Department of the Navy to disclose classified military information, except as may be required in his official duties and only after coordination with and approval by the release authority stipulated in the Department of the Navy Information Security Program Regulation.

(b) No person in the Department of the Navy shall convey or disclose by oral or written communication, publication, or other means, except as may be required by his official duties, any information concerning the Department of Defense or forces, or any person, thing, plan or measure pertaining thereto, where such information might be of possible assistance to a foreign power; nor shall any person in the Department of the Navy make any public speech or permit publication of any article written by or for him which is prejudicial to the interests of the United States. The regulations concerned with the release of information to the public through any media will be as prescribed by the Secretary of the Navy.

(c) No person in the Department of the Navy shall disclose any information whatever, whether classified or unclassified, or whether obtained from official records or within the knowledge of the relator, which might aid or be of assistance in the prosecution or support of any claim against the United States. The prohibitions prescribed by the first sentence of this paragraph are not applicable to an officer or employee of the United States who is acting in the proper course of, and within the scope of, his official duties, provided that the disclosure of such information is otherwise authorized to be disclosed by statute, Executive order of the President, or departmental regulation.

(d) Any person in the Department of the Navy receiving a request from the public for Department of the Navy records shall be governed by security classification markings, distribution statements on technical documents, and the term "For Official Use Only" which may be used to identify material or records not to be released to the general public. The general regulations concerned with the availability to the public of the Department of the Navy records shall be as prescribed by the Secretary of the Navy.

(e) Persons in the Department of the Navy desiring to submit manuscripts to commercial publishers, or professional, political or international subjects shall comply with regulations promulgated by the Secretary of the Navy.

(f) No person in the naval service on active duty or civilian employee of the Department of the Navy shall act as correspondent of a news service or periodical, or as a television or radio news commentator or analyst, unless assigned to such duty in connection with the public affairs activities of the Department of the Navy, or authorized by the Secretary of the Navy. Except as authorized by the Secretary of the Navy, no person assigned to duty in connection with public affairs activities of the Department of the Navy shall receive any compensation for acting as such correspondent, commentator, or analyst.

[39 FR 7135, Feb. 25, 1974, as amended at 41 FR 18075, Apr. 30, 1976; 45 FR 80279, Dec. 4, 1980]

§ 700.1117 Official records in civil courts.

No person in the Department of the Navy shall produce or release any official record in response to a subpoena duces tecum, motion for discovery, interrogatory or otherwise in a civil suit, or in connection with preliminary investigations by attorneys or others except in accordance with the provisions of the Manual of the Judge Advocate General.

§§ 700.1118—700.1119 [Reserved]

§ 700.1120 Rules for preventing collisions, afloat and in the air.

(a) All persons in the naval service responsible for the operation of naval ships, craft and aircraft shall diligently observe the International Rules for Preventing Collisions at Sea, (commonly called International Rules of the Road) Inland Rules of the Road, domestic and international air traffic regulations and such other rules and regulations as may be established by the Secretary of Transportation or other competent authority for regulating traffic and preventing collisions on the high seas, in inland waters, or in the air, where such laws, rules and regulations are applicable to naval ships and aircraft. In those situations where such law, rule or regulation is not applicable to naval ships, craft or aircraft they shall be operated with due regard for safety of others.

(b) Any significant infraction of the laws, rules and regulations governing traffic or designed to prevent collisions on the high seas, in inland waters, or in the air, which may be observed by persons in the naval service shall be promptly reported to their superiors, including the Chief of Naval Operations or Commandant of the Marine Corps when appropriate.

(c) Reports need not be made under this article if the facts are otherwise reported in accordance with other directives, including duly authorized safety programs.

§§ 700.1121—700.1132 [Reserved]

§ 700.1133 Use of title for commercial enterprises.

No person in the naval service shall, while on extended naval service, use his grade or rating in connection with a commercial enterprise. "Extended naval service," for the purposes of this article, is defined as active duty, other than active duty for training, under a call or order that does not specify a period of thirty days or less. This article shall not apply to a person who is not on active service, nor shall it apply to authorship of any material for publication, by persons on either active or inactive service, provided that such material is published in accordance with existing regulations.

§§ 700.1134—700.1142 [Reserved]

§ 700.1143 Return of Government property on release from active service.

When a person is released from active service, he shall return all Government property in his possession to his commanding officer or other competent authority.

§ 700.1144 Issue or loan of public property.

(a) Except as prescribed in this article, public property including supplies, shall not be issued, on loan or otherwise, to any state, organization, or private individual except by special authority of Congress.

(b) When so authorized by the senior officer present, a commanding officer may issue such supplies as can be spared to those in distress in the event of a public exigency or calamity, or to vessels in distress, and, when so authorized, he may issue rations and necessities to destitute seamen and airmen of the United States who are received on board. The supply officer making such an issue shall do so only pursuant to an order in writing, shall procure receipts when practicable for the supplies issued, and shall render accounts for such supplies in accordance with the instructions contained in the Naval Supply System Command Manual or the Marine Corps Supply Manual, as appropriate.

(c) Public property, except aircraft, may be loaned by the commandant of a naval district to a state located within the district and maintaining naval militia organizations, for use by a naval militia organization in that state, provided that 95 percent of the personnel of the last-mentioned organization are attached to or associated with a unit of the naval reserve, and provided that the naval militia organization conforms to the standards prescribed by the Secretary of the Navy for similar organizations of the Naval Reserve. A report of such loans shall be made by the commandant to the interested bureaus, offices or commands of the Navy Department.

§§ 700.1145—700.1149 [Reserved]

§ 700.1150 Alcoholic liquors.

(a) Except as may be authorized by the Secretary of the Navy, the introduction, possession or use of alcoholic liquors for beverage purposes on board any ship, craft, aircraft, or in any vehicle of the Department of the Navy is prohibited. The transportation of alcoholic liquors for personal use ashore is authorized, subject to the discretion of the officer in command or officer in charge, or higher authority, when the liquors are delivered to the custody of the officer in command or officer in charge of the ship, craft, or aircraft in sealed packages, securely packed, properly marked and in compliance with customs laws and regulations, and stored in securely locked compartments, and the transportation can be performed without undue interference with the work or duties of the ship, craft, or aircraft. Whenever alcoholic liquor is brought on board any ship, craft, or aircraft for transportation for personal use ashore, the person who brings it on board shall at that time file with the officer in command or officer in charge of the ship, craft, or aircraft, a statement of the quantity and kind of alcoholic liquor brought on board by him, together with his certification that its importation will be in compliance with customs and internal revenue laws and regulations and applicable State or local laws at the place of debarkation.

(b) The introduction, possession, and use of alcoholic liquors for beverage purposes or for sale is authorized within naval activities and other places ashore under naval jurisdiction, to the extent and in such manner as the Secretary of the Navy may prescribe.

§ 700.1151 Responsibilities concerning marijuana, narcotics, and other controlled substances.

(a) All personnel shall endeavor to prevent and eliminate the unauthorized use of marijuana, narcotics, and other controlled substances within the naval service.

(b) Except for authorized medicinal purposes, the introduction, possession, use, sale, or other transfer of marijuana, narcotic substances or other controlled substances on board any ship, craft, or aircraft of the Department of the Navy or within any naval station or other place under the jurisdiction of the Department of the Navy, or the possession, use, sale, or other transfer of marijuana, narcotic substances or other controlled substances by persons in the naval service, is prohibited.

(c) The term "controlled substance" means: a drug or other substance included in Schedule I, II, III, IV, or V established by section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), as updated and republished under the provisions of that Act.

§§ 700.1152—700.1160 [Reserved]

§ 700.1161 Endorsement of commercial product or process.

Except as necessary during contract administration to determine specification or other compliance, no person in the Department of the Navy, in his official capacity, shall endorse or express an opinion of approval or disapproval of any commercial product or process.

Subpart K—Purpose and Force of Regulations within the Department of the Navy

§ 700.1201 Purpose and force of United States Navy Regulations.

United States Navy Regulations is the principal regulatory document of the Department of the Navy, endowed with the sanction of law, as to duty, responsibility, authority, distinctions, and relationships of various commands, officials, and individuals. Other regulations, instructions, orders, manuals, or similar publications, shall not be issued within the Department of the Navy which conflict with, alter or amend any provision of Navy Regulations.

§ 700.1202 Issuances concerning matters over which control is exercised.

Responsible officers and officials of the Department of the Navy may issue, or cause to be issued, orders, instructions, directives, manuals or similar publications concerning matters over which they exercise command, control, or supervision.

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart A—Department of the Navy Freedom of Information Act Program

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AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502, 32 CFR Part 286 (40 FR 8190). Subpart E also issued under 32 CFR Part 296 (40 FR 4911), unless otherwise noted.

Subpart A—Department of the Navy Freedom of Information Act Program

SOURCE: 48 FR 23914, May 24, 1983, unless otherwise noted.

§ 701.1 Purpose.

Subparts A, B, and D of this Part 701 implement the Freedom of Information Act (5 U.S.C. 552), and the Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program, (*See* 32 CFR Part 286) and outline the policies and procedures for the disclosure of records, establish mandatory time limits for Freedom of Information Act (FOIA) responses and explain how members of the public may inspect or obtain copies of Department of the Navy records.

§ 701.2 Scope and effect.

(a) *Applicability.* Subparts A, B, and D of this Part 701 apply throughout the Department of the Navy. They govern the disclosure of records to the general public, including military and civilian employees of the government acting as private citizens. Informal requests, requests for information other than naval records, and inquiries for which no record exists are not subject to the technical requirements of these subparts.

(b) *Requests from government officials.* Requests from officials of federal, state, or local governments for Department of the Navy records shall be honored on an expeditious basis whenever possible. For purposes of determining whether record(s) shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(c) *Requests from foreign governments.* Foreign governments seeking information from the Department of the Navy should use established official channels for obtaining information.

(d) *Exclusion of requests.* The following categories of requests are excluded from the scope of Subparts A, B, and D of this Part 701:

(1) Requests from the Congress, which are governed by Secretary of the Navy Instruction 5730.5 series, Procedures for the Handling of Naval Legislative Affairs and Congressional Relations;

(2) Requests from individuals, including Department of the Navy personnel, for records pertaining to themselves and located in "systems of records," which are governed by Secretary of the Navy Instruction 5211.5 series, Personal privacy and rights of individuals regarding records pertaining to themselves (32 CFR Part 701, Subparts F and G);

(3) Requests from the General Accounting Office (GAO) for records in connection with audits, which are governed by Secretary of the Navy Instruction 5741.2 series, Relations with the General Accounting Office, and;

(4) Court orders or subpoenas demanding production of records, discovery, or testimony of witnesses, which are governed by the Manual of the Judge Advocate General (JAGINST 5800.7A), Chapter XIII (32 CFR Part 720).

(e) *Publication and public availability of special classes of records.* The requirements of 5 U.S.C. 552 that certain classes of Department of the Navy regulatory, rulemaking, and organizational records be published in the FEDERAL REGISTER for the guidance of the public and be made available for public inspection and copying, are implemented in 32 CFR Part 701, Subpart E.

(f) *Public affairs regulations.* Subparts A, B, and D of this Part 701 are intended to complement, not restrict, the conduct of Department of the Navy public affairs, media relations, community relations, internal relations functions and practices authorized in Secretary of the Navy Instruction 5720.44 series, Department of the Navy Public Affairs Regulations. Should the practices authorized in that regulation conflict in any respect with any provisions of these Subparts A, B, and D of Part 701, the provisions of these subparts shall be controlling.

(g) *U.S. Navy Regulations.* For the purposes of Article 1116.3, U.S. Navy Regulations (1973) (32 CFR 700.1116(c)), the release of a record to a member of the public under the Freedom of Information Act shall be deemed to have been done in the discharge of official duties. For the purposes of Article 1116.4 (32 CFR 700.1116(c)), the release of a record designated as FOR OFFICIAL USE ONLY to a member of the public upon a request shall be processed in accordance with instructions outlined in § 701.9.

(h) *Other directives.* The following directives, to the extent that they do not conflict with these Subparts A, B, and D of this Part 701, and serve to supplement it, include:

(1) Marine Corps Manual, paragraph 1015 (also, for Headquarters Marine Corps, HQO P5000.12G, Chapter 11)—release on information from the personnel records of members and former members of the Marine Corps.

(2) Federal Personnel Manual, Chapters 293, 294, 297, 335, 339, and 713—release of information from active and inactive civilian personnel records.

(3) Manual of the Medical Department, U.S. Navy NAVMED P-117, Chapter 23, Section III—release of information from active and inactive medical records.

§ 701.3 Definitions.

As used in Subparts A, B, and D of this Part 701 the following terms and meanings apply:

(a) *Administrative appeal.* An appeal made by a requester to the appellate authority (Judge Advocate General or General Counsel) or his/her designee to reverse a decision made by an initial denial authority in which all or part of a requested record was denied or a request for waiver/reduction of fees was denied. A requester may also file an administrative appeal on the basis of nonresponse to an FOIA request within the statutory time limit.

(b) *Agency records.* Information or products of data compilation, regardless of physical form or characteristics, (e.g., written documents, ADP storage media, computer printouts, etc.) made or received by a naval activity in connection with the transaction of public business and preserved by a naval activity as evidence of the organization, policies, functions, decisions, or procedures of the naval activity. The term "agency records" does not include:

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, and parts of wrecked aircraft, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources, including but not limited to musical arrangements and compositions, formulae, designs, drawings, maps, and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions or procedures of the Department of the Navy.

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geographical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is an intangible or documentary record, such as an individual's memory or oral communication.

(6) Supervisor's personal notes on his/her employees (which are not required to be prepared or maintained by any naval instruction or regulation), concerning their performance, etc., and used solely as a memory aid in preparing evaluation reports. These notes are not made available to other persons in the agency, are not filed with agency records, and are destroyed after the evaluation period by the individual who prepared them. Among this category of notes are Division Officer's notebooks and Marine Corps Unit Leader's notebooks, etc.

(c) *Appellate authority.* The Judge Advocate General or the General Counsel are the naval officials having jurisdiction over administrative appeals or partial denials of FOIA requests under their cognizance as delineated in § 701.8.

(d) *FOIA request.* A written request for Department of the Navy records made by a member of the public, or an organization, business, etc., that either explicitly or implicitly invokes 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (*see* 32 CFR Part 286) and/or Subparts A, B, and D of this Part 701. The written request must also contain a reasonable description of the record(s) being sought and contain some statement as to the requester's willingness to pay all fees or those up to a specified amount. A record must exist and be in the possession and control of the Department of the Navy at the time of the request to be considered subject to Subparts A, B, and D of this Part 701. There is no requirement tc create or complile a record not already in existence.

(e) *Initial denial authority* (*IDA*). An official who has been granted authority to withhold records, either in whole or in part, which are requested under the FOIA based on one or more of the nine FOIA exemptions. IDA's may also grant requests for reduction/waiver of fees. A list of IDA's are contained in § 701.5.

§ 701.4 Policy.

In accordance with the spirit and intent of 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (*see* 32 CFR Part 286) the Department of the Navy will make available to any person the maximum information concerning its operations, activities, and administration. The FOIA does not permit agencies to distinguish between U.S. citizens and foreign citizens. A naval record shall be withheld only when it is exempt from disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. Therefore, subject to the conditions of Subparts A and B of this Part 701 concerning exemptions and the requester's compliance with prescribed minimum requirements, records requested by the public will be made available promptly, fully, and willingly, as a matter of right.

(a) *Requests for records.* Naval activities receiving written or oral requests from members of the public are responsible for advising the requester of the correct means for obtaining permission to examine or copy records at appropriate times and at locations where they are held, or for obtaining copies of such records. Minimum requirements are prescribed in § 701.3.

(b) *Time limits.* Each naval activity is responsible for developing procedures for ensuring the expeditious handling and prompt retrieval and review of the requested records. The cognizant official having responsibility for the record(s) has 10 working days (excluding Saturdays, Sundays, and legal holidays) to respond to the requester regarding the FOIA request. The 10 working day time limit commences upon receipt of the request by the cognizant activity. If the cognizant official is unable to meet the statutory time limit of 10 working days, he/she may, in limited instances, seek a time extension (*See* § 701.7).

(c) *Identification of records.* Subject to the provisions of Subparts A, B, and D of this Part 701, requests shall be honored for records which are "reasonably described." A "reasonably described" record provides sufficiently accurate and specific descriptions (i.e., memorandum, title, index citation, subject area, date the record was created, originator, type and location of incident) which enable naval personnel to locate and identify particular records with a reasonable amount of effort. A record must exist and be in the possession and control of the Department of the Navy at the time of the request to be considerd subject to Subparts A, B, and D of this Part 701. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, shall be referred to the originating agency or activity for direct response to the requester. There is no obligation to create, compile, or obtain a record not already in existence to satisfy an FOIA request.

(d) *Fee assessment.* (1) In addition to reasonably describing the record(s), the requester should make a clear statement that he/she is willing and able to pay all fees or those up to a specified amount, or satisfactorily show that he/she is entitled to a waiver/reduction of fees, if the fees for reproduction and/or search of the requested record(s) are expected to exceed the $30 minimum fee waiver threshold. Fees may not be used as a means to discourage requesters from seeking records. Collection of fees is limited to the charges associated with direct document search and duplication efforts. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Documents shall be furnished without charge or at a reduced rate when the naval activity determines that a waiver or reduction of fees is in the public interest because furnishing the information is considered as primarily benefiting the general public. Minimum fees shall not be charged. *See* 32 CFR Part 701, Subpart D for determining fees.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer and meeting the 10 working day response time, naval activities shall adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver/reduction of fees, and it appears that the direct search and reproduction costs associated with the request shall exceed the automatic fee waiver threshold, the request need not be processed and the requester shall be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver/reduction of fees, then the specified amount or the automatic fee waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver/reduction of fees, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic fee waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Activities may require payment of all or a portion of estimated fees before processing extensive or costly requests.

(v) Subsequent requests from persons who have failed to pay fee obligations need not be processed until previous obligations have been met or waived.

(vi) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(A) All fees have been received.

(B) Fees have been waived because they fall below the automatic fee waiver threshold.

(C) A request for waiver has been denied.

(D) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(E) Fees due in a specified amount have not been received.

§ 701.5 Responsibility and authority for determinations.

(a) *Release authorities.* Commanding officers and heads of all Navy and Marine Corps activities (departmental and field) are authorized to furnish copies of records under their cognizance, or to make such records available for examination, upon proper request, subject to the exceptions noted in paragraphs (c) (2) and (3) of this section. Coordination with officials having cognizance over the subject matter of the requested record is advised when there is a question as to its releasability. If it is determined that a requested record should not be released in whole or in part, the release authority should forward the request, a copy of the requested document(s) and his/her recommendations, to the initial denial authority in the chain of command for release determination. For records which are part of record systems governed by the Privacy Act, the record custodian specified in the systems notice published annually by the Chief of Naval Operations is the appropriate authority to respond to an initial request for a record.

(b) *Initial denial authorities (IDA's).* The following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny, as well as grant requests, either in whole or in part, for documents or records; to grant a one 10 working day extension to the time limits for responding to FOIA requests; and to deny requests to waive or reduce FOIA fees, when the information sought relates to matters within their respective areas of responsibility:

(1) For the Navy Department: The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Material; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Chief, Bureau of Medicine and Surgery; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Chief of Naval Development; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law). The Judge Advocate General and his Deputy, and the General Counsel and his Deputies are excluded from this grant of authorization, but the Assistant Judge Advocates General, the Assistants to the General Counsel and the Director, Litigation Office, Office of the General Counsel, are so authorized.

(2) For the shore establishment:

(i) All officers authorized pursuant to Article 22, UCMJ, or designated as empowered in section 0103d, Manual of the Judge Advocate General, to convene general courts martial.

(ii) The Director, Naval Investigative Service, the Assistant Commander (Management and Operations), Naval Legal Service Command, and the Director of Navy Laboratories.

(3) In the operating forces: All officers authorized pursuant to Article 22, UCMJ, or designated as empowered in section 0103d, Manual of the Judge Advocate General, to convene general courts martial.

(c) *Responsibility for acting on requests.* (1) General rule. Subject to § 701.7(c) when a Department of the Navy official receives a request for a copy of, or permission to examine a record under his/her cognizance, that official is responsible for acting on the request in the time and manner prescribed in Subparts A, B, and D of this Part 701.

(2) If an official receives a request for records that he/she holds, but which were originated by another naval activity, the official shall ordinarily refer the FOIA request and copies of the requested documents to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. That naval activity shall not, in any case, release or deny such records without prior consultation with the other naval activity.

(3) The following actions shall be taken with regard to requests for:

(i) Classified records. (A) If a naval activity receives an FOIA request or mandatory declassification review request for information whose existence or nonexistence is itself classifiable under the provisions of Executive Order 12356, the naval activity shall refuse to confirm or deny the existence or nonexistence of the requested information.

(B) If a naval activity receives a request for documents in its custody that were classified by another agency, it shall refer the request and copies of the requested documents to the originating agency for processing, and may, after consultation with the originating agency inform the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements. In cases in which the originating agency determines in writing that a response under paragraph (c)(3)(i)(A) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

(C) If a naval activity receives a request which includes classified records originated by another naval activity for which the head of the activity is not the classifying authority in accordance with OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation, the request and copies of the requested documents shall promptly be readdressed and forwarded to the official having classification authority for the subject matter. The appropriate official will then review and make a determination as to the releasability of the classified portions of the records and so notify the requester within 10 working days after he/she has received the request. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) NIS reports—a request for a Naval Investigative Service report or any portion thereof shall promptly be readdressed and forwarded to the Director, Naval Investigative Service, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Direct liaison with NIS prior to the referral is encouraged.

(iii) JAG Manual investigative reports—a request for a JAG Manual investigative report shall promptly be readdressed and forwarded to OJAG, Code 21, for review and release determination except as provided in section 1331(b)(1) of the Manual of the Judge Advocate General (JAGINST 5800.7A) (§ 720.31(b)(1) of this chapter). The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(iv) Mishap investigation reports—a request for a mishap investigation report shall promptly be readdressed and forwarded to the Commander, Naval Safety Center, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(v) Naval Audit Service reports—a request for a Naval Audit Service report shall promptly be readdressed and forwarded to the Naval Audit Service Headquarters (Code OPS) for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral.

(vi) Technical documents controlled by distribution statements—a request for a technical document to which "Distribution Statement B" is affixed shall promptly be readdressed and forwarded directly to the "controlling DoD office" in accordance with Chief of Naval Material Instruction 5200.29 series, Distribution Statements on Technical Documents, for review and release determination. The naval activity that initially received the request has the responsibility for notifying the requester of the referral. Direct liaison with the cognizant official prior to referral is encouraged.

(vii) Records originated by other government agencies—When a request for records is received which was originated by an agency outside the Department of the Navy, promptly readdress it, forward the request and copies of the requested documents to the cognizant agency having the responsibility for acting on the request and notify the requester of the readdressal. This may be accomplished by sending a copy of the readdressal letter to the requester. The 10 working day time limit commences when the request is received by the cognizant agency. If additional guidance is required, contact the Chief of Naval Operations (OP-09B1P) or the Commandant of the Marine Corps (Code PAP), as appropriate. Direct liaison with the agency having cognizance over the record is encouraged for ensuring the expeditious handling of the request.

(d) *Misdirected requests.* Misdirected/misaddressed requests received for copies of or permission to examine Department of the Navy records shall be promptly readdressed and forwarded directly to the cognizant naval activity having the responsibility for acting on the request. Although the 10 working day time limit does not commence until the request is received by the cognizant official, telephonic liaison is encouraged to alert the official that the request is being referred. The naval activity that initially received the request is responsible for notifying the requester of the readdressal.

(e) *Records on Non-U.S. Government source.* When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of the request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid basis for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the official may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified and action on the request normally shall not be taken until after the outcome of the court action is known.

§ 701.6 Format and procedures for requesting records.

(a) *Minimum requirements.* To qualify as an FOIA request within the technical requirements of Subparts A, B, and D of this Part 701, a request for copies of, or for permission to examine Department of the Navy records must, at a minimum:

(1) Be in writing and indicate expressly, or by clear implication, that it is a request made under 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (*See* 32 CFR Part 286) or Subparts A, B, and D of this Part 701.

(2) Contain a reasonable description of the particular record(s) requested. For example, provide details of the subject matter, type and location of incident, dates, originator, etc., to enable naval personnel to locate or identify the particular record(s) desired with a reasonable amount of effort; and,

(3) Contain a clear statement that the requester is willing and able to pay all fees or fees up to a specified limit, or provide satisfactory evidence that he/she is entitled to a waiver/reduction of such fees in accordance with 32 CFR Part 701, Subpart D, if the documents to be released are expected to exceed the minimum fee waiver threshold.

Note: Fees totaling $30 or less normally waived (*See* 32 CFR Part 701, Subpart D).

(b) *Treatment of request not meeting minimum requirements.* (1) Requests which do not conform to the minimum requirements should, if possible, be answered within 10 working days after receipt. Whenever possible, the response should attempt to assist the requester in obtaining the desired records in accordance with the provisions of Subparts A, B, and D of this Part 701. For example, if the requester has not provided a reasonable description of the desired record(s), assist the requester in framing a new request in a way which might facilitate identification of the record(s). If the requester fails to offer to pay fees, furnish the requester with a reasonable estimate of any search and reproduction costs associated with the processing of the request. Activities are encouraged to contact the requester, if practicable, to clarify what he/she is seeking.

(2) If a request fails to qualify for treatment within the technical requirements of Subparts, A, B, and D of this Part 701, but the requested record is available and is releasable in its entirety, the responding official may provide a copy of the record if he/she determines it to be in the best inter-

ests of the activity to do so. The application of this provision shall be within the sole and exclusive discretion of the responsible official of the activity concerned and shall not be construed as creating an exception to, or grounds for, waiver of the minimum requirements.

§ 701.7 Procedures for processing FOIA requests.

(a) *Administrative controls.* Upon receipt of a written request for examination or copies of records, the naval activity will immediately ensure that action is taken to control the request and provide for its priority and expeditious handling, and for responding to the requester within the 10 working day limit (excluding Saturdays, Sundays, and legal holidays).

(b) *Time limits for determinations.* Once the request is received by the official having responsibility for acting on it, a response shall be made to the requester within 10 working days (excluding Saturdays, Sundays, and legal holidays), unless an extension of the time limit is needed to complete the processing of the request.

(1) Extension of time limits. (i) Statutory extensions of time limits are only authorized in accordance with the following conditions:

(A) The need to search for and collect records that are located in whole or part at places separate from the activity processing the request;

(B) The need to search for, collect, and examine a substantial number of records responsive to a request; or,

(C) The need to consult with another naval activity or another agency which has a substantial subject-matter interest in the determination of the request.

(ii) When a statutory extension of time is needed, the IDA shall acknowledge the request in writing, within the 10 working day period, decribe the circumstance(s) requiring the delay, and indicate the anticipated date for a substantive response.

(iii) If it appears to be a substantial possibility that the request might be ultimately denied, in whole or in part, the Judge Advocate General (Code 14) or the General Counsel, as appropriate, may be consulted by expeditious means prior to authorizing such extension.

(iv) When it is anticipated that the normal statutory time limits (including the statutory time extension) are insufficient to provide a response, the IDA shall acknowledge the request in writing prior to the expiration of the normal statutory time limits (including the statutory time extension), describe the circumstance(s) requiring the dalay, and indicate the anticipated date for the substantive response. The requester shall be advised that he/she may appeal to the designee of the Secretary of the Navy within 45 days or await a substantive determination by a specified date. It shall be made clear that such an agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(v) As an alternative to the taking of formal extensions of time as described in paragraphs (b)(1)(i) (A) through (C) of this section, the official having responsibility for the release of requested information may negotiate informal extensions of time with requesters where appropriate, as an alternative to the procedure described in paragraph (b)(1) (i) or (iv) of this section.

(2) [Reserved]

(c) *Action by officials who are not IDA's.* When the head of the activity responsible for acting on a request is not authorized under § 701.5(b) to deny requests, that official shall, within the applicable time limit, take one of the following actions:

(1) If it has been determined that the requested record is releasable in its entirety and is available, and the fees for search and duplication have either been met or waived, forward a copy of the requested record directly to the requester. However, if search and duplication fees exceed the minimum fee waiver threshold, the requester may be instructed to forward payment prior to the record(s) being provided.

(2) If it has been determined that the requested record is releasable in its entirety but is not yet available, notify the requester that the request has been approved and that the requested record will be forwarded by a specified date, subject to appropriate

directions concerning the payment of fees.

(3) If it has been determined that the request for examination of records is approved, notify the requester of the time and place where the records may be examined, subject to appropriate directions concerning the payment of fees, if any, incurred for searching for the records.

(4) If it has been determined that the request for records has been misaddressed or that the records being sought are held by another naval activity or government agency, promptly readdress it and advise the requester of the action taken.

(5) If it has been determined that the requested record should not be released in whole or in part, forward the request, a copy of the requested record(s), and the recommendation for denial (which briefly states the applicable exemption(s) and whether a governmental interest would be jeopardized by its release) to the next superior in the administrative chain of command authorized under § 701.5(b).

(d) *Action by IDA's.* When an IDA receives a request referred by a subordinate official or receives any other request to which he/she may respond, the IDA shall, within a 10 working day time limit, take one of the following actions:

(1) Execute one of the actions specified in paragraph (c) (1) through (4) of this section or, if appropriate, direct a subordinate to do so.

(2) If the processing of a request cannot be completed within the applicable time limit, explain the reason(s) for the delay to the requester, with notification that he/she may treat this delay as an initial denial with a right to submit an administrative appeal to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel) within 45 days, or that the requester may agree to await a substantive determination by a specified date. It shall be made clear that any such agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(3) If the IDA determines that the requested record contains information which is not releasable under the FOIA, and the releasable information contained in the record is not reasonably segregable from the nonreleasable information, notify the requester of the determination, the reasons therefor, and the name(s) and title(s) of the person(s) responsible for the denial. Such notification shall also include the specific citation of the exemption(s) upon which the denial is based, a brief discussion that there is a jeopardy to the governmental interest served by invoking the exemption(s), and advisement of the requester's right to appeal to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel) within 45 days. Additionally, if the denial is based, in whole or in part, on a security classification, the notification shall include a summary of the particular provisions of paragraph 5-101 of OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation, which contains the rationale for the correct classification of the requested record.

(4) If the IDA determines that the requested record contains releasable information that is reasonably segregable from the nonreleasable information, he/she shall:

(i) With respect to the releasable information of the record, take the actions indicated in paragraph (c)(1) through (3) of this section; and,

(ii) With respect to the nonreleasable information of the record, take the action indicated in paragraph (d)(3) of this section.

(5) If the requester relies upon a claimed entitlement to a waiver/reduction of applicable fees, the IDA shall, if he/she determines that the requester's entitlement to such waiver/reduction is not warranted, notify the requester of such determination, the reason(s) therefor, the name(s) and title(s) of the person(s) responsible for the determination, and the right of the requester to appeal the determination to the designee of the Secretary of the Navy (Judge Advocate General or General Counsel), within 45 days. If the requester appeals the denial to waive/reduce fees, the release of the records may be withheld until the fee

is paid or the appellate authority grants a waiver/reduction of fees.

(e) *Other reasons.* Other reasons that an FOIA request cannot be acted upon, but which are not considered to be denials are:

(1) The referring official is unable to make a determination as to the releasability of a requested record within the applicable time limit because the record has not been located or obtained.

(2) The information requested is not a record within the meaning of the FOIA and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (*See* 32 CFR Part 286).

(3) A record has not been described with sufficient particularity to enable it to be located by conducting a reasonable search.

(4) The requester has failed to comply with procedural requirements concerning time, place, or fees. Note: Officials who are not IDA's may not deny requests for waiver or reduction of search and duplication fees.

(5) The activity has determined through knowledge of its files and a reasonable search effort that it does not hold the requested record.

(f) *Consultation encouraged.* Consultation with officials in other naval activities or other government agencies having a substantial interest in or useful advice concerning the determination of requests under the purview of Subparts A, B, and D of this Part 701 is encouraged wherever practicable, and, in some instances, is required.

(1) Consultation is required with other naval activities or agencies having substantial interest in the subject matter of requested records which may be withheld under the exemptions cited in 32 CFR Part 701, Subpart B.

(2) Consultation with the Office of the Judge Advocate General, the Office of the General Counsel, or the appropriate naval attorney in the field is encouraged concerning the interpretation and application of the technical provisions of Subparts A, B, and D of this Part 701, or where a denial of a request is expected to be appealed or judicially challenged.

(3) Consultation with a public affairs officer or the Chief of Information (OP-007) is encouraged when the requested records are considered newsworthy; a request is received from a news media representative; or, a denial of a request is expected to be publicly challenged. Further, the Chief of Information shall be notified of any release having evident public affairs implications.

(4) In the case of a denial of a request, in whole or in part, under Subparts A, B, and D of this Part 701 or a denial of waiver/reduction of fees, the IDA shall maintain a legible copy of the case file containing all pertinent correspondence and the requested record for prompt forwarding, upon request, to the Judge Advocate General or the General Counsel, in the event of an appeal.

(g) *Mailing lists.* Frequent FOIA requests are received which seek mailing lists of the home addresses and/or duty station addresses of naval personnel.

(1) A request for a mailing list of home addresses is not releasable without the individuals' consent. This is construed to be a clearly unwarranted invasion of the individual' privacy and therefore may be withheld from disclosure under 5 U.S.C. 552(b)(6).

(2) A request for a mailing list for names and duty station addresses may be releasable, however certain facts must be brought to the attention of the requester prior to releasing the list. For example, many existing duty station address listings do not contain sufficient information to enable either the U.S. Postal Service or Navy-operated mail and distribution facilities to ensure delivery. These incomplete addresses would necessitate directory service which is often not available. As a result, such mailings will normally be endorsed as undeliverable and returned to the sender or otherwise disposed of. Further, if during the processing of a mailing list request it is determined that the duty station address is insufficient to effect delivery, the requester should be advised by letter of the potential for nondelivery. Fees associated with the processing of mailing list requests are determined in ac-

cordance with 32 CFR Part 701, Subpart D.

§ 701.8 Appeals from denials of requests for records.

(a) *Responsibility and authority.* (1)*Delegation of authority.* The Judge Advocate General and the General Counsel are authorized to determine appeals made to the Secretary of the Navy on denials of requests for copies of Department of the Navy records or portions thereof, or refusals to waive or reduce fees, concerning matters which are within their respective areas of cognizance for legal services. This shall include the authority to release or withhold records, or portions thereof, waive fees, and to perform such other acts as may be required of the Secretary of the Navy in connection with the appeals made under 5 U.S.C. 552 and Subparts A, B, and D of this Part 701.

(2) *Respective areas of cognizance.* As delineated in Secretary of the Navy Instructions 5430.25 and 5430.27 series, the respective areas of cognizance of the Judge Advocate General and the General Counsel for providing legal services for the Department of the Navy are:

(i) Judge Advocate General—In addition to military law, all matters except those falling under the cognizance of the General Counsel.

(ii) General Counsel—

(A) The business and commercial law aspects of matters relating to:

(*1*) The acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contracts, and matters relating to the naval petroleum reserves;

(*2*) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contracts;

(*3*) The Office of the Comptroller of the Navy;

(*4*) The Naval Data Automation Command;

(*5*) All matters in the fields of patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(*6*) Procurement aspects of foreign military sales, co-production and cooperative research and development and related agreements, NATO standardization agreements and matters relating to the Arms Exports Control Act.

(*7*) Department of the Navy litigation before the Armed Services Board of Contract Appeals; and,

(B) Civilian personnel law matters pertaining to the employment of present and former Navy civilian employees.

(b) *Addresses for appeals.* Appeals to the Secretary of the Navy under the provisions of 5 U.S.C. 552 and Subparts A, B, and D of this Part 701 should be addressed to the appropriate authority as noted above. The appropriate mailing addresses are:

(1) The Judge Advocate General (Code 14), Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(2) The General Counsel, Navy Department, Washington, DC 20360.

(c) *Time and format for filing appeals.* To be effective for the purposes of the provisions of 5 U.S.C. 552 and Subparts A, B, and D of this Part 701, an appeal from an initial denial, in whole or in part, for requested records or a refusal to waive/reduce fees, must be in writing and be received by the appellate authority not more than 45 days following the date of transmittal of the notification of the initial denial. Additionally, such appeal must clearly state that it is an appeal from a denial of a request made under the "Freedom of Information Act" or Subparts A, B, and D of this Part 701, and must attach a copy of the letter denying the request.

(d) *Time limits for determining appeals.* (1)*Normal requirement.* A final determination on an appeal to the Secretary of the Navy normally shall be sent to the appellant within 20 working days after the appeal is received in the Office of the Judge Advocate General or the General Counsel.

(2)*Extension of time limits.* If additional time is needed due to unusual circumstances (*see* § 701.7(b)(1)(i)(A) through (C)), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If, however, a determination cannot be made and the requester notified within 20 working days, the appellate authority may acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters may be advised that, if the delay exceeds the statutory extension provision or is for reasons other than "unusual circumstances" they may consider their administrative remedies exhausted. Further, requesters should be advised that they may await a substantive response without prejudicing their right to judicial remedy. The appellate authority shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the record(s). A copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Action upon receipt.* Upon receipt of an appeal, the Judge Advocate General or the General Counsel shall inform the IDA who shall expeditiously forward the case file with such comments and recommendations as he/she or other interested officials may deem appropriate. The Director of Naval Intelligence (OP-009DX) may be consulted, when appropriate, in appeal cases to resolve inconsistences or disputes involving classified records. All naval activities are directed to provide rapid and responsive assistance, as required, for facilitating correct and timely determinations of appeals. Direct liaison with appropriate officials within the Department of the Navy and other interested federal agencies is authorized at the discretion of the appellate authority, who also shall be responsible for coordinating with appropriate officials of the Departments of Defense and Justice in such manner as may be prescribed by directives of the Secretary of Defense. The Secretary of the Navy or appropriate Civilian Executive Assistants shall be consulted and kept advised of cases having unusual implications, and the Chief of Information shall be consulted and kept advised on cases described in § 701.7(f)(3).

(f) *Notification of final determination.* Upon resolving the issue(s) involved, the appellate authority shall provide the appellant with a written notification of the final determination made on the appeal. If the determination has the effect of granting a request, in whole or part, the appellate authority shall cause the requested records, or the releasable portions thereof, to be made promptly available to the appellant. If the final determination has the effect of denying a request, in whole or part, the notification shall contain the name(s) and title(s) of the individual(s) reponsible for such denial, an advisement of the requester's right to seek judicial review, and the following additional matters, as applicable:

(1) An explanation of the exemption(s) upon which the determinaton is based and the governmental interest that will be jeopardized by its release.

(2) If the determination is based, in whole or part, upon a security classification, a statement be provided that based on a declassification review it is determined that the record meets specified criteria and rational of OPNAV Instruction 5510.1 series, Department of the Navy Information Security Regulation.

§ 701.9 For Official Use Only (FOUO).

(a) *General.* (1) *For Official Use Only* applies to information, records, and other materials which have not been given a security classification under the criteria of an Executive Order, but which contain information which may be withheld from the public for one or more of the reasons cited in FOIA exemptons 2 throught 9. No other materials shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), as FOUO is not authorized as a form of classification to protect national security interests.

(2) Prior FOUO application. The prior application of FOUO markings is not a conclusive basis for withholding a record requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply

in withholding all or part of the record. Information which is "reasonably segregable" and does not fall under an FOIA exemption(s) must be considered for release to the requester. In the event any exemption(s) applies(y), it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(3) Historical papers. Documents such as notes, working papers, and drafts properly considered to be "records" under the FOIA and retained as historical evidence of Department of the Navy actions enjoy no special status apart from their exemptions under 5 U.S.C. 552.

(4) Unauthorized disclosure. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of Department of the Navy information classified for security purposes. However, appropriate administrative action shall be taken to the extent feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal and civil sanctions against the responsible person(s). The naval activity that originated the FOUO information shall be informed of its unauthorized disclosure.

(b) [Reserved]

Subpart B—Guidelines on Matters Which Are Exempt from Public Disclosure

Source: 48 FR 23201, May 24, 1983, unless otherwise noted.

§ 701.21 General rule.

No record or portion thereof shall be withheld from disclosure to the public unless it falls within the scope of one or more of the nine FOIA exemptions listed in § 701.24. Notwithstanding that a record falls under one or more FOIA exemptions, the record (or a reasonably segregable portion thereof) is releasable and shall be made available to the requester unless the cognizant official determines that a governmental interest would be jeopardized by its release. In no event, however, shall information be denied because its release might embarrass the Department of the Navy or its military or civilian officials in the performance of their duties.

§ 701.22 Reasonably segregable matters.

If a record contains both releasable and nonreleasable information, the releasable information shall be made available if it is reasonably segregable from the nonreleasable information in the record. Releasable information is "reasonably segregable" if it provides the requester with meaningful and undistorted information after the nonreleasable information is excised and if it can be reasonably assumed that a skillful and knowledgeable person could not reconstruct the nonreleasable information of the record. Further, all information in a record is releasable and shall be made available to a member of the public, unless in the judgment of the official making the determination:

(a) The release of the information would be inconsistent with a statutory requirement or OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation; or,

(b) The release of the information would jeopardize a governmental interest.

§ 701.23 Judicial review.

All total and partial denials of information are subject to both administrative and judicial appeals. In the event of a judicial review, a U.S. District Court may examine the withheld record or portions thereof in their entirety to determine whether the record or portions thereof are exempt from disclosure. Therefore, extreme care should be taken when claiming an exemption to ensure that a governmental interest does exist for the withholding of the information.

§ 701.24 Specific exemptions.

The following types of matters may be withheld from public disclosure unless otherwise prescribed by law:

(a) *"Exemption 1" Matters (5 U.S.C. 552(b)(1)).* Refers to information which is currently and properly classified under criteria established by Executive Order 12356 and is authorized to remain classified in the interest of national security. The withholding of such information is implemented in the U.S. Navy in OPNAV Instruction 5510.1 series, Department of the Navy Information Security Program Regulation. If a requested record is classified in accordance with the OPNAV Instruction 5510.1 series, the record must be reviewed for the basis of the security classification. The following general rules are applicable:

(1) The request must be referred, with information and recommendations, to an official who is authorized under § 701.5, to deny requests and who has cognizance of the classified matters in the record, if the basis of the classification is:

(i) An approved security classification guide promulgated in accordance with the OPNAV Instruction 5510.1 series;

(ii) Resource document originated by another naval activity or government agency;

(iii) An original classification determination for which there is written justification for classification, and the justification remains valid; or,

(iv) Not readily identifiable, but classification is believed to be warranted on the basis of classification criteria contained in the OPNAV Instruction 5510.1 series.

(2) If the original classifier of a record within his/her classification jurisdiction receives a request for the recorded and, upon review, determines that there is no basis for continued classification, either in whole or part, the record should be declassified, in whole or in part, and reviewed to determine whether any other FOIA exemptions are applicable to the declassified information, and, if so whether a governmental interest would be jeopardized by its release.

(b) *"Exemption 2" Matters (5 U.S.C 552(b)(2))*. Refers to information containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of the Department of the Navy if their release to the public would substantially hinder the effective performance of a significant function of the Department of the Navy and they do not impose requirements directly on the general public. Examples include:

(1) Operating rules, guidelines and manuals for investigators, inspectors, auditors, or examiners, and certain schedules or methods of operation which would reveal:

(i) Negotiating and bargaining techniques;

(ii) Bargaining limitations and positions;

(iii) Inspection schedules and methods, and

(iv) Audit schedules and methods.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance to duty, advancement, or promotion.

(c) *"Exemption 3" Matters (5 U.S.C. 552(b)(3))*. Refers to information which is specifically exempted from disclosure by statute that permits no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to the particular types of information to be withheld. Such authorization or requirement may be found in the terms of the statute itself or in Executive Orders or regulations authorized by, or in implementation of, a statute. The Privacy Act, 5 U.S.C. 552a, is not considered an applicable statute under 5 U.S.C. 552(b)(3). Examples include:

(1) Public Law 86-36 (50 U.S.C. 402 note)—National Security Agency information.

(2) 35 U.S.C. 181-188—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) 42 U.S.C. 2162—Restricted Data and Formerly Restricted Data.

(4) 18 U.S.C. 798—Communication Intelligence.

(5) 50 U.S.C. 402(d)(3) and (g)—Intelligence sources and methods.

(6) 21 U.S.C. 1175—Drug abuse prevention/rehabilitation.

(7) 42 U.S.C. 4582—Alcohol abuse prevention/rehabilitation.

(d) *"Exemption 4" Matters (5 U.S.C. 552(b)(4))*. Refers to trade secrets or commercial or financial information obtained from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records falling under this exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or, impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, where such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of the Navy.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(e) *"Exemption 5" Matters (5 U.S.C 552(b)(5)).* Refers to internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies or within or among Department of Defense and the Department of the Navy components, except as provided in paragraphs (e)(2) through (5) of this section.

(1) Examples include:

(i) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of the Navy by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those nonfactual portions of evaluations by Department of the Navy personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secrets or other confidential research development, or commercial information owned by the government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(vi) Records that are exchanged among agency personnel and within and among Department of the Navy, Department of Defense, or other agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspections, reports of the Inspector Generals, audits, investigations or surveys pertaining to safety, security, or the internal management, administration, or operation of the Department of the Navy, when these records have traditionally been treated by courts as privileged against disclosure in litigation.

(2) If any such intra- or interagency record or reasonably segregable portion of such record would hypothetically be made available through the "discovery process" (i.e., the legal process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing) in the course of litigation with the Department of the Navy, such record, should not be withheld even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the Department of the Navy in maintaining its confidentiality, the record or document need not be made available.

(3) Intra- or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *"Exemption 6" Matters (5 U.S.C 552(b)(6)).* Refers to information in personnel and medical files as well as similar personal information in other files, that, if disclosed, to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) This exemption is relevant to a request for information that is intimate to an individual or that possibly could have adverse effects upon that individual or his/her family if disclosed. Section 701.105 lists several examples of nonderogatory information about the official character of a naval member or employee that can routinely be disclosed to a member of the public, without constituting a clearly unwarranted invasion of the personal privacy of the individual concerned. The determination of whether disclosure of other information about an individual would constitute a "clearly unwarranted" invasion of his/her right of personal privacy is a subjective judgment requiring careful weighing of the privacy interest to be protected—including consideration of the nature of the information requested, the degree of its sensitivity from the standpoint of the individual or his/her family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or his/her family—against the importance of the requester's expressed or inferred purposes for seeking the information. In no event shall information be denied because its release might embarrass the Department of the Navy or its military or civilian officials in the performance of their duties.

(3) When the only basis for withholding information is protection of the personal privacy of an individual who is the subject of the record, information should not be withheld from that individual or from his/her designated representative. A clearly unwarranted invasion of the personal privacy of others discussed in that record may, however, constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record. Note: This exemption shall not be used to protect the privacy of a deceased person, since deceased persons do not have a right to privacy. Information, however, may be withheld under this exemption to protect the privacy of the next of kin of the deceased person.

(g) *"Exemption 7" Matters (5 U.S.C. 552(b)(7)).* (1) Refers to investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders, or regulations issued pursuant to law, but only to the extent that their release would:

(i) Interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(ii) Deprive a person of the right to a fair trial or an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(iii) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(iv) Disclose the identity of a confidential source; disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D));

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their continued effectiveness (5 U.S.C. 552(b)(7)(E)); or,

(vi) Endanger the life or physical safety of law enforcement personnel or their families (5 U.S.C. 552(b)(7)(F)).

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense and Navy when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within the Navy, or a lawful national security intelligence investigation conducted by an authorized agency or office within the Department of the Navy. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(h) *"Exemption 8" Matters (5 U.S.C. 552(b)(8)).* Refers to information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *"Exemption 9" Matters (5 U.S.C. 552(b)(9)).* Refers to geological and geophysical information and data (including maps) concerning wells.

Subpart C—[Reserved]

Subpart D—Guidelines for Assessment/Waiver/Reduction of Fees

SOURCE: 48 FR 23204, May 24, 1983, unless otherwise noted.

§ 701.40 Purpose.

The fees described in this subpart apply to FOIA requests. They reflect direct search and duplication costs, recovery of which are permitted by 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program.

§ 701.41 Fee assessment.

(a) *Minimum fees.* Minimum fees shall not be charged. When direct search and duplication costs for a single FOIA request total $30 or less, fees shall be waived automatically. Naval activities, however, may set aside the automatic fee waiver provision when, on the basis of good evidence, the activity can demonstrate that the waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting on behalf of a single requester in an effort to take advantage of the waiver may create a situation in which a waiver should be denied. The automatic fee waiver is not applicable when the full costs for search and duplication exceed $30. For example, if the search and duplication costs total $45, the fee assessment charged to the requester is $45.

(b) *Decisions to waive or reduce fees.* Decisions to waive or reduce fees that exceed the automatic fee waiver threshold of $30, shall be made on a case-by-case basis. The following circumstances, however, describe the most common instances in which waiver or reduction of fees are most likely to be warranted:

(1) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(2) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(3) The records are to be made available in response to a news media requester whose requests are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(i) The charges exceed the fee waiver threshold of $30; and,

(ii) The requester record does not contain information that can be considered as primarily benefiting the general public, or the search for the requested record requires an inordinate amount of naval personnel time, and impacts adversely on the naval activity concerned in accomplishing its primary functional missions.

(iii) When news media requests are broad in scope and are considered unreasonable by the head of the naval activity, a response should be forwarded to the requester, advising that the requester provide greater specificity. An estimate of fee charges may be included in the specificity letter, if practicable, or provided after receiving a reframed request.

(4) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(5) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

§ 701.42 Waiver/reduction of fees.

(a) The principal fee waiver policy objectives of the Freedom of Information Act are twofold:

(1) To strengthen the ability of citizens to exercise their rights to understand, and by lawful means establish, support, modify, or terminate national laws, programs, policies of all kinds; and,

(2) To strengthen major aspects of national life in well-recognized areas of public concern where such strengthening will significantly benefit the general public.

(b) A request for a reduction or waiver of fees may be denied when:

(1) There is no definitive evidence to suggest the requested information contains significant potential for benefiting the general public, or releasing the information would not result in any such potential benefits actually being received by the general public; or,

(2) The requester fails to provide indication of his/her expertise on the subject, or the ability to extract and convey potentially beneficial information from the data provided, or the ability to effectually disseminate any extracted information; or,

(3) An inordinate amount of time is required to respond to the request, thus causing an adverse impact on the activity's mission. Cases which involve masses of informa[illegible] or data, (e.g., wide-ranging reque[illegible], are examples of cases requiring extraordinary time expenditure.

§ 701.43 Computation of fees.

The fee schedule contained in this subpart is used to compute the search and duplication costs associated with processing a given FOIA requests. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

§ 701.44 Collection of fees.

Collection of fees need not be made in advance of rendering the service unless the costs are expected to exceed the minimum fee waiver threshold and the requester has not indicted a willingness in writing to pay. It frequently is more practical to collect fees at the time of providing the service to the recipient when the requester specifically states that the cost involved shall be acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement when the requester has not agreed in writing to pay the anticipated fee; has not honored previous commitments to pay fees that were owed the naval activity; or, when substantial costs are involved.

§ 701.45 Search and duplication fees.

(a) *Search fees.* The following delineates the fees authorized to be assessed to the requester seeking information concerning the Department of the Navy:

(1) Manual search.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$8
Professional	01-06/GS9-GS15	16
Executive	07/GS16,ES1 and above	26

(2) Computer search is based on direct cost of the central processing unit, input/output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records of personnel to the computer site/location may be included.

(b) *Duplication fees:*

Type	Cost per page
Printed material	$.01
Office copy	.10
Microfiche	.25

(c) *Audiovisual documentary material.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(d) *Other records.* Direct search and duplication costs for any record not described above will be computed in the manner described for audiovisual documentary material.

Subpart E—Indexing, Public Inspection, and Federal Register Publication of Department of the Navy Directives and Other Documents Affecting the Public

SOURCE: 40 FR 36325, Aug. 20, 1975, unless otherwise noted.

§ 701.51 Purpose.

This subpart implements 5 U.S.C. 552 (a) (1) and (2) and provisions of Department of Defense Directive 5400.7, February 14, 1975, (32 CFR Part 286, 40 FR 8190), Department of Defense Directive 5400.9, December 23, 1974, (32 CFR Part 296, 40 FR 4911), and Regulations of the Administrative Committee of the FEDERAL REGISTER (1 CFR Chs. I and II) by delineating responsibilities and prescribing requirements, policies, criteria, and procedures applicable to:

(a) Publishing the following Department of the Navy documents in the FEDERAL REGISTER:

(1) Certain classes of regulatory, organizational, policy, substantive, and procedural documents required to be so published for the guidance of the public;

(2) Certain classes of proposed regulatory documents required to be so published for public comment prior to issuance; and

(3) Certain public notices required by laws or regulations to be so published;

(b) Making available, for public inspection and copying, certain other classes of documents having precedential effect for decisions concerning members of the public;

(c) Maintaining current indexes of documents having precedential effect for decisions concerning members of the public, and publishing such indexes or making them available by other means; and

(d) Receiving and considering petitions of members of the public for the issuance, revision, or cancellation of regulatory documents of some classes.

§ 701.52 Scope and applicability.

This subpart prescribes actions to be executed by, or at the direction of, components of the Navy Department [as defined in § 700.104(c) of this chapter] and specified headquarters activities for apprising members of the public of the existence and terms of Department of the Navy regulations, policies, and substantive and procedural rules and decisions which may affect them, and for enabling members of the public to participate in Department of the Navy rulemaking processes in matters of substantial and direct concern to the public. The fact that a document may be published or indexed and made available for public inspection and copying under this subpart does not affect the possible requirement under Subpart A for producing it for examination, or furnishing a copy, in response to a request made under that subpart.

§ 701.53 [Reserved]

§ 701.54 Policy.

In accordance with the spirit and intent of 5 U.S.C. 552, it is the right of the public to have the maximum information concerning the organization and functions of the Department of the Navy and the policies and substantive and procedural rules by which those functions are performed in relation to the public. In accordance with Department of Defense Directive 5400.9 (32 CFR Part 296, 40 FR 4911), moreover, the public is encouraged to participate to the maximum practicable extent in Department of the Navy rulemaking which has a substantial and direct impact upon the public.

§ 701.55 [Reserved]

§ 701.56 Publication of adopted regulatory documents for the guidance of the public.

(a) *Classes of documents to be published.* Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release or disclosure to the public [see § 701.5(b)(4)], the following classes of Department of the Navy documents are required to be published on a current basis in the FEDERAL REGISTER for the guidance of the public:

(1) *Naval organization and points of contact.* Descriptions of the central and field organization of the Department of the Navy and the established places at which, the members or employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) *Methods and procedures for business with the public.* Statements of the general course and methods by which Department of the Navy functions affecting members of the public are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) *Procedural rules and forms.* Rules of procedure for functions affecting members of the public, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and con-

tents of all papers, reports, or examinations required to be submitted to such rules of procedures; and

(4) *Substantive rules and policies.* Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department of the Navy. Such rules are commonly contained in directives, manuals, and memorandums.

(i) *"General applicability" defined.* The definition prescribed in 1 CFR 1.1 is pertinent to the classes of documents contemplated in § 701.56(a)(4):

(ii) *Internal personnel rules and internal practices.* In addition to the other exemptions which are listed in 5 U.S.C. 552(b) and § 701.5(b)(4) and are applicable to the publication requirements of this section, particular attention is directed to the exemption pertaining to internal personnel rules and internal practices, which is discussed in § 701.24(b).

(iii) *Local regulations.* As a normal rule, it is deemed unnecessary to publish in the FEDERAL REGISTER a regulation which is essentially local in its scope or application, such as a directive issued by a base commander in the implementation of his responsibility and authority under Subpart G of Part 700 of this title for guarding the security of the installation or controlling the access and conduct of visitors or tradesmen. However, such publication of a local directive may be authorized where extraordinary justification exists, as determined by the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the concurrence of the Judge Advocate General.

(iv) *Incorporation by reference.* With the approval of the Director of the FEDERAL REGISTER given in the limited instances authorized in 32 CFR 296.6 and 1 CFR Part 51, the requirement for publication in the FEDERAL REGISTER may be satisfied by reference in the FEDERAL REGISTER to other publications containing the information which must otherwise be published in the FEDERAL REGISTER.

(b) *Public inspection.* When feasible, Department of the Navy and Department of Defense documents which are published in the FEDERAL REGISTER for guidance of the public should be made available for inspection and copying, along with any available indexes of such documents, in the same facilities provided for public inspection and copying of the documents contemplated in § 701.59.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 36325, Aug. 20, 1975, as amended at 43 FR 17355, Apr. 24, 1978; 45 FR 8599, Feb. 8, 1980]

§ 701.57 Prepublication of proposed regulations for public comment.

(a) *Discussion.* The requirements of this section are not imposed by statute, but are the implementation of the policies and procedures which were created administratively in 32 CFR Part 296. In effect, the pertinent provisions of 32 CFR 296.1 and 296.5 establish, within the Department of Defense and its components, procedures that are analogous to the public rulemaking procedures applicable to some functions of other Federal agencies under 5 U.S.C. 553. While the administrative policy of encouraging the maximum practicable public participation in Department of the Navy rulemaking shall be diligently followed, determinations by the Department of the Navy as to whether a proposed regulatory requirement originated by it comes within the purview of this section and the corresponding provisions of 32 CFR 296.5, and as to whether inviting public comment is warranted, shall be conclusive and final.

(b) *Classes of documents affected.* Each proposed regulation or other document of a class described in § 701.56(a) (or a proposed revision of an adopted document of any of those classes) which would "originate" within the Department of the Navy a requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public, must be evaluated to determine whether inviting public comment prior to issuance is warranted. Documents that merely implement regulations previously issued by higher naval authorities or by the Department of Defense will not be deemed to "originate" requirements within the purview of this section. If a proposed document is within the purview of this section, publication for inviting public comment will be deemed to be warranted unless, upon evaluation, it is affirmatively determined both that a significant and legitimate interest of the Department of the Navy or the public will be served by omitting such publication for public comment, and that the document is subject to one or more of the following exceptions:

(1) It pertains to a military or foreign affairs function of the United States which has been determined under the criteria of an executive order or statute to require a security classification in the interests of national defense or foreign policy;

(2) It relates to naval management, naval military or civilian personnel, or public contracts (e.g., Navy Procurement Directives), including nonappropriated fund contracts;

(3) It involves interpretative rules, general statements of policy or rules of agency organization, procedure, or practice; or

(4) It is determined with regard to the document, for good cause, that inviting public comment is impracticable, unnecessary, or contrary to the public interest.

(c) *Procedures*—(1) *Normal case.* Unless the official having cognizance of a proposed regulatory document determines under the criteria of § 701.57(b) that inviting public comment is not warranted, he shall cause it to be published in the FEDERAL REGISTER with an invitation for the public to submit comments in the form of written data, views, or arguments during a specified period of not less than 30 days following the date of publication. An opportunity for oral presentation normally will not be provided, but may be provided at the sole discretion of the official having cognizance of the proposed directive if he deems it to be in the best interest of the Department of the Navy or the public to do so. After careful consideration of all relevant matters presented within the period specified for public comment, the proposed document may be issued in final form. After issuance, the adopted document, and a preamble explaining the relationship of the adopted document to the proposed document and the nature and effect of public comments, shall be published in the FEDERAL REGISTER for the guidance of the public.

(2) *Where public comment is not warranted.* The official having cognizance of a proposed document within the purview of this section shall, if he determines that inviting public comment concerning the document is not warranted under the criteria of § 701.57(b), incorporate that determination, and the basis therefor, in the document when it is issued or submitted to a higher authority for issuance. After issuance, such document shall be published in the FEDERAL REGISTER for the guidance of the public, if required under § 701.56(a).

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

§ 701.58 Petitions for issuance, revision, or cancellation of regulations affecting the public.

In accordance with the provisions of 32 CFR 296.7, the Department of the Navy shall accord any interested person the right to petition, in writing, for the issuance, revision, or cancellation of a regulatory document that originates, or would originate, for the Department of the Navy, a policy, requirement, or procedure which is, or would be, within the purview of § 701.57. The official having cognizance of the particular regulatory document involved, or having cognizance of the subject matter of a proposed document, shall give full and prompt consideration to any such petition. Such official may, at his absolute discretion, grant the petitioner an opportunity to appear, at his own expense, for the purpose of supporting his petition, if this is deemed to be compatible with orderly conduct of public business. The petitioner shall be advised in writing of the disposition, and the reasons for the disposition, of any petition within the purview of this section.

§ 701.59 Availability, publication, and indexing of other documents affecting the public.

(a) *Discussion.* In addition to the requirements of 5 U.S.C. 552(a)(1) for publishing some classes of regulatory documents in the FEDERAL REGISTER for the guidance of the public, there are requirements in 5 U.S.C. 552(a)(2) for facilitating public identification and inspection of other classes of documents which have precedential effect with regard to Department of the Navy decisions affecting members of the public. The documents that are subject to these requirements must be kept readily available for public inspection and copying at designated places, unless they are promptly published and copies are offered for sale. Additionally, such documents of these classes as have been, or will be issued after July 4, 1967, are required to be indexed on a current basis, and these indexes, or supplements thereto, must be published at least quarterly in accordance with the provisions of this section. In determining whether a particular document is subject to the requirements of this section, consideration should be given to the statutory purposes and legal effect of the provisions.

(1) *Statutory purposes.* In general, the purposes of the requirements are to provide members of the public with essential information for enabling them to deal effectively and knowledgeably with Federal agencies in matters affecting them; to apprise members of the public of the existence and contents of documents which have potential legal consequences as precedents in administrative determinations affecting them; and to permit public examination of the basis of administrative actions affecting the public.

(2) *Legal effect.* If a document is required to be indexed and made available under this section, it may not be used or asserted as a precedent against a member of the public unless it was so indexed and made available, or unless the person against whom it is asserted had actual and timely notice of its contents.

(b) *Classes of documents affected.* (1) Subject to the provisions of 5 U.S.C. 552(b) which exempt specified matters from requirements for release or disclosure to the public [see § 701.5(b)(4) and Subpart B], the following classes of Department of the Navy documents are included in the requirements of this section:

(i) *Final adjudicative opinions and orders*—opinions (including concurring and dissenting opinions) and orders which are issued as part of the final disposition of adjudication proceedings (as defined in 5 U.S.C. 551), which may have precedential effect in the disposition of other cases affecting members of the public;

(ii) *Policy statements and interpretations*—statements of policy and interpretations of less than general applicability (i.e., applicable only to specific cases, organizations, or persons), which are not required to be published in the FEDERAL REGISTER, but which may have precedential effect in the disposition of other cases affecting members of the public;

(iii) *Manuals and instructions*—administrative staff manuals, directives, and instructions to staff, or portions thereof, which establish Department of the Navy policy or interpretations of policy that serve as a basis for determining the rights of members of the public with regard to Department of the Navy functions. In general, manuals and instructions relating only to internal-management aspects of property or fiscal accounting, personnel administration, and most other "proprietary" functions of the department are not within the scope of this provision. This provision also does not apply to instructions for employees on the methods, techniques, or tactics to be used in performing their duties; for example:

(A) Instructions or manuals issued for audit and inspection purposes;

(B) Those which prescribe operational tactics; standards of performance; criteria for defense, prosecution, or settlement of cases; or negotiating or bargaining techniques, limitations, or positions; and

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and systems.

(2) In determining whether a document has precedential effect, the pri-

mary test is whether it is intended as guidance to be followed either in decisions or evaluations by the issuing authority's subordinates, or by the issuing authority itself in the adjudication or determination of future cases involving similar facts or issues. The kinds of orders or opinions which clearly would have precedential effect are those that are intended to operate both as final dispositions of the questions involved in the individual cases presented, and as rules of decisions to be followed by the issuing authority or its subordinates in future cases involving similar questions. By contrast, many adjudicative orders and opinions issued within the Department of the Navy operate only as case-by-case applications of policies or interpretations established in provisions of manuals or directives and are not themselves used, cited, or relied on as rules of decision in future cases. In these instances, the underlying manual or directive provisions obviously would have precedential effect, but the orders and opinions themselves would not have. A recommendation by an official who is not himself authorized to adjudicate, or to issue a binding statement of policy or interpretation in a particular matter would not have precedential effect, though an order, opinion, statement of policy, or interpretation issued by an authorized official pursuant to such recommendation might have that effect.

(c) *Deletion of identifying details.* (1) Although the exemptions described in § 701.5(b)(4) and Subpart B are applicable to documents which are required to be indexed and made available for public inspection and copying under this section, there is no general requirement that any segregable portions of partially exempt documents be so indexed and made available for public inspection and copying. As a general rule, a record may therefore be held exempt in its entirety from the requirements of this section if it is determined that it contains any exempt matter and that a significant and legitimate governmental purpose will be served by withholding such exempt matter. However, an exception to this general rule does exist, in effect, with regard to a record which would be exempt only because it contains information which, if disclosed, would result in a clearly unwarranted invasion of privacy.

(2) Where necessary to prevent a clearly unwarranted invasion of a person's privacy, identifying details should be deleted from a record which is required to be indexed and made available for public inspection and copying under this section. In every such case, the justification for the deletion must be fully stated in writing in a manner which avoids creating inferences that could be injurious to the persons whose privacy is involved. Usual reasons for deletion of identifying details include protection of privacy in a person's business affairs, medical matters, or private family matters; humanitarian considerations; and avoidance of embarrassment to a person in a matter not involving possible misconduct or improper, erroneous, or inefficient performance of duties on his part.

(d) *Publication of indexes*—(1) *Form of indexes.* Each index should be arranged topically or by descriptive words, so that members of the public may be able to locate the pertinent documents by subject, rather than by case name or by a numbering system.

(2) *Time of publication.* Each component having cognizance of records required under this section to be indexed shall compile and maintain an index of such records on a continually current basis. Each such index shall initially be published, by one of the methods authorized in § 701.59(d)(3) not later than 1 May 1975. An updated version of each such index, or a current supplement thereto, shall be published by an authorized method at least quarterly thereafter.

(3) *Methods of publication.* The methods authorized for publication of the indexes contemplated in this section are:

(i) Publication in the FEDERAL REGISTER;

(ii) Commercial publication, provided that such commercial publication is readily available to members of the public, or will be made available upon request and payment of costs (if this method is utilized, information on the cost of copies and the address from which they may be obtained shall be published in the FEDERAL REGISTER); or

(iii) Furnishing internally-reproduced copies upon request, at cost not to exceed the direct cost of duplication in accordance with Subpart D provided that it is determined, by an order published in the FEDERAL REGISTER, that the publication of the index by methods § 701.59(d)(3) (i) or (ii) would be unnecessary or impracticable. Such order shall state the cost of copies and the address from which they may be obtained. The Chief of Naval Operations (Op-09B1) is authorized to issue such an order in a proper case.

(4) *Public inspection of indexes.* In addition to publication by one of the foregoing methods, each index will be made available for public inspection and copying in accordance with § 701.59(e), at the location(s) at which Department of the Navy records are available for public inspection.

(e) *Where records may be inspected.* Locations and times at which Department of the Navy records, and indexes thereof, are available for public inspection and copying are shown in § 701.32.

(f) *Cost.* Fees for copying services, if any, furnished at locations which Department of the Navy records are available for public inspection shall be determined in accordance with Subpart D.

(g) *Records of Navy Court of Military Review.* The Navy Court of Military Review is deemed to be a "court of the United States" within the meaning of 5 U.S.C. 551 and is therefore excluded from the requirements of 5 U.S.C. 552. Nevertheless, unpublished decisions of the Navy Court of Military Review, although not indexed, are available for public inspection at the location at which Department of the Navy records are available for public inspection.

Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

AUTHORITY: 5 U.S.C. 552a, 32 CFR Part 286a.

SOURCE: 48 FR 38611, Aug. 25, 1983, unless otherwise noted.

§ 701.100 Purpose.

32 CFR Part 701, Subparts F and G delineate revised policies, conditions, and procedures that govern collecting personal information, and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Navy in systems of records. They implement 5 U.S.C. 552a (the Privacy Act of 1974), and the Department of Defense Directive 5400.11 series, Personal Privacy and Rights of Individuals Regarding Their Personal Records (DOD Dir. 5400.11) (32 CFR Part 286a), and prescribe:

(a) Procedures whereby individuals can be notified if any system of records contain a record pertaining to them.

(b) Requirements for verifying the identity of individuals who request their records before the records are made available to them.

(c) Procedures for granting access to individuals upon request for their records.

(d) Procedures for reviewing a request from individuals to amend their records, for making determinations on requests, and for appealing adverse determinations.

(e) Procedures for notifying the public of the existence and character of each system of records.

(f) Procedures for disclosing personal information to third parties.

(g) Procedures for exempting systems of records from certain requirements of 5 U.S.C. 552a.

(h) Procedures for safeguarding personal information.

(i) Rules of conduct for the Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a. *See* § 701.113.

§ 701.101 Scope and effect.

(a) *Applicability.* 32 CFR Part 701, Subparts F and G, apply throughout the Department of the Navy, and to any contractor maintaining a system of records to accomplish a Department of the Navy mission. For the purposes of any criminal liabilities adjudged, any contractor and any employee of such contractor shall be considered to be an employee of the Navy Department. Additionally, all requests by individuals for records (located in a system of records) pertaining to themselves which specify either the Freedom of Information Act or the Privacy Act (but not both) shall be treated under the procedures established under the Act specified in the request. When the request specifies, that it be processed under both the Freedom of Information Act and the Privacy Act, Privacy Act procedures should be employed. The individual should be advised that, while the Department of the Navy has elected to process his/her request in accordance with Privacy Act procedures, he/she can be assured that he/she will be provided with all the information that can be released under either the Privacy Act or the Freedom of Information Act. Requests may fall, however, within the scope of other applicable directives as follows:

(1) Requests from an individual about another individual are governed by the provisions of 5 U.S.C. 552 (Freedom of Information Act) and the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

(2) Requests by the General Accounting Office for information or records pertaining to individuals, except with respect to the requirement for disclosure accountings as provided in § 701.107(c) are governed by the SECNAVINST 5741.2 series, Relations with the General Accounting Office.

(3) Official and third party requests for information from systems of records controlled by the Office of Personnel Management shall be governed by 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual.

(b) *Other directives.* In case of a conflict, 32 CFR Part 701, Subparts F and G, take precedence over any existing Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (Freedom of Information Act) and implemented by the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

§ 701.102 Policy, responsibilities, and authority.

(a) *Policy.* Subject to the provisions of 32 CFR Part 701, Subparts F and G, it is the policy of the Department of the Navy to:

(1) Ensure that all its personnel at all echelons of command or authority comply fully with 5 U.S.C. 552a to protect the privacy of individuals from unwarranted invasions. Individuals covered by this protection are living citizens of the United States or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor has the same rights as the individual or minor and may act on the individual's or minor's behalf. (A member of the Armed Forces is not a minor for the purposes of 32 CFR Part 701, Subparts F and G).

(2) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law of Executive order, and disclose this information only as authorized by 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifible or use of sampling of certain data for certain individuals, only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(3) Keep only that personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Let individuals have access to, and obtain copies of, all or any portions of their records, subject to exemption procedures authorized by law and 32 CFR Part 701, Subparts F and G.

(5) Let individuals request amendment of their records when discrepancies proven to be erroneous, or untimely, incomplete, or irrelevant, are noted.

(6) Let individuals request an administrative review of decisions that deny them access to, or refuse to amend their records.

(7) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(8) Maintain no records describing how an individual exercises his/her rights guaranteed by the First Amendment (freedom of religion, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(i) Expressly authorized by statute;

(ii) Authorized by the individual about whom the record is maintained;

(iii) Within the scope of an authorized law enforcement activity; or

(iv) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his/her record concerning religious preference, particularly that required in emergency situations.

(9) Maintain only systems of records which have been published in the FEDERAL REGISTER.

(b) *Responsibilities.* (1) The Chief of Naval Operations (Op-09B) is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G within the Department of the Navy. Additionally, the Chief of Naval Operations (Op-09B) is designated as the principal Privacy Act coordinator for the Department of the Navy.

(2) The Commandant of the Marine Corps is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, within the Marine Corps.

(3) Each addressee is responsible for the execution of the requirements of 5 U.S.C. 552a within his/her organization and for implementing and administering a Privacy Act program in accordance with the provisions of 32 CFR Part 701, Subparts F and G. Each addressee shall designate an official to be Privacy Act coordinator to:

(i) Serve as the principal point of contact on all Privacy Act matters.

(ii) Provide training for activity/command personnel in the provisions of 5 U.S.C. 552a.

(iii) Issue implementing instruction.

(iv) Review internal directives, practices, and procedures, including those for forms and records, for comformity with 32 CFR Part 701, Subparts F and G, when applicable.

(v) Compile and submit input for the annual report and record systems notices.

(vi) Maintain liaison with records-management officials as appropriate (e.g., maintenance and disposal procedures and standards, forms, and reports).

(4) The systems managers are responsible for (with regard to systems of records under their cognizance):

(i) Ensuring that all personnel who in any way have access to the system or who are engaged in the development of procedures or handling records be informed of the requirements of 5 U.S.C. 552a and any unique safeguarding or maintenance procedures peculiar to that system.

(ii) Determining the content of and setting rules for operating the system.

(iii) Ensuring that the system has been published in the FEDERAL REGISTER and that any additions or significant changes are prepublished in the FEDERAL REGISTER.

(iv) Answering requests for information for individuals.

(v) Keeping accountability records of disclosures.

(vi) Evaluating information proposed for each system for relevance and necessity during the developmental phase of a new system or when an amendment to an existing system is proposed; in addition, annually comparing the system with the records system notice published in the FEDERAL REGISTER and considering:

(A) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(B) Specific adverse consequences of not collecting each category of information.

(C) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(D) Length of time the information is needed.

(E) Cost of maintaining the data compared to the risk or adverse consequences of not maintaining it.

(F) Necessity and relevance of the information to the mission of the command.

(vii) Keeping the Privacy Act coordinator informed of non-routine Privacy Act requests.

(5) Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. Employees shall:

(i) Not disclose any information contained in a system of records by any means of communication to any person, or agency, except as authorized in 32 CFR Part 701, Subparts F and G.

(ii) Not maintain unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(iii) Safeguard the privacy of individuals and the confidentiality of personal information contained in a system of records.

(iv) Familiarize themselves with the Rules of Conduct. *See* § 701.113.

(c) *Denial authority.* Only the following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny requests for notification, access, and amendment made under 32 CFR Part 701, Subparts F and G, when the records relate to matters within their respective areas of command, technical, or administrative responsibility, as appropriate:

(1) *For the Navy Department.* The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Material; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Commander, Naval Medical Command; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law).

(2) *For the shore establishment.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General,* to convene general courts martial.

(ii) The Director, Naval Investigative Service and the Assistant Commander (Management and Operations), Naval Legal Service Command.

(3) *In the operating forces.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General,* to convene general courts martial.

(d) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel.

(2) The Judge Advocate General and the General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of requests for notification, access, or amendment of records, as set forth in § 701.104 (a), (b), and (c) other than as indicated in paragraph (d)(1) of this section and other than initial denials of requests for notification, access, or amendment of records from civilian Official Personnel Folders or records contained any other Office of Personnel Management (OPM) forms, which will be reviewed by OPM.

(e) The authority of the Secretary of the Navy, as the head of an agency, to request records subject to the 5 U.S.C. 552a from an agency external to the Department of Defense for civil or criminal law enforcement purposes, pursuant to subsection (b)(7) of 5

U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

§ 701.103 Definitions.

For the purposes of 32 CFR Part 701, Subparts F and G, the following meanings apply:

(a) *Access.* Reviewing or obtaining copies by individuals of records that pertain to themselves, or by agents designated by the individuals, or by individual's legal guardians, that are a part of a system of records.

(b) *Agency.* For purposes of disclosing records, the Department of Defense is an "agency". For all other purposes, including applications for access, appeals from denials, exempting systems of records, etc., the Department of the Navy is the "agency".

(c) *Confidential source.* Any individual or organization that has given information to the Federal government under: (1) An express promise that the identity of the source would be withheld, or (2) an implied promise to withhold the identity of the source made before 27 September 1975.

(d) *Disclosure.* The conveyance of information about an individual, by any means of communication, to an organization or to an individual who is not the subject of the record. In the context of the 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, this term only applies to personal information that is part of a system of records.

(e) *Individual.* A living citizen of the United States, or an alien lawfully admitted for permanent residence; or a member of the United States naval service, including a minor. Additionally, the legal guardian of an individual or a parent of a minor has the same rights as the individual, and may act on behalf of the individual concerned under 32 CFR Part 701, Subparts F and G. Members of the naval service, once properly accepted, are not minors for purposes of 32 CFR Part 701, Subparts F and G. The use of the term "individual" does not, however, vest rights in the representatives of decedents to act on behalf of the decedent under 32 CFR Part 701, Subparts F and G (except as specified in § 701.105(b), nor does the term embrace individuals acting in an entrepreneurial capacity (e.g., sole proprietorships and partnerships).

(f) *Maintain.* When used in the context of records on individuals, includes collect, file or store, perserve, retrieve, update of change, use, or disseminate.

(g) *Official use.* Within the context of 32 CFR Part 701, Subparts F and G, this term encompasses those instances in which officials and employees of the Department of the Navy have a demonstrated need for use of any record to complete a mission or function of the Department, or which is prescribed or authorized by a directive.

(h) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(i) *Privacy Act request.* A request from an individual for information about himself/herself concerning the existence of, access to, or amendment of records that are located in a system of records. (The request must cite or reasonably imply that it is pursuant to 5 U.S.C. 552a).

(j) *Record.* Any item, collection, or grouping of information about an individual that is maintained by or for the Department of the Navy or by an element of the Navy Department, operating forces, or shore establishment, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(k) *Risk assessment.* The application of steps in an analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center computerized system, periodically, to select economically, feasible safeguards.

(l) *Routine use.* The disclosure of a record or the use of such record for a purpose which is compatible with the purpose for which the records were collected. Routine use encompasses not only common and ordinary uses but also all proper and necessary uses of the record even if any such use occurs infrequently.

(m) *Statistical record.* A record maintained for statistical research or reporting purposes only, which may not be used in whole or in part in making any determination about an identifiable individual.

(n) *System of records.* A group of records from which information "is", as opposed to "can be", retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The capability to retrieve information by personal identifiers alone does not subject a system of records to 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G.

(o) *System manager.* That official who has overall responsibility for records within a particular system. He/she may serve at any level in the Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (e.g., for local records, at the local activity).

(p) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.104 Notification, access, and amendment procedures.

(a) *General*—(1) *Summary of requirement.* (i) Notification procedures are provided under subsection (e)(4) of 5 U.S.C. 552a to enable an individual to ascertain from the appropriate system manager whether or not a particular system of records contains information pertaining to him/her. If the system does contain such a record, the individual may request access to the record, pursuant to subsection (d)(1) of 5 U.S.C. 552a, to ascertain the contents. Amendment procedures are provided under subsections (d)(2) and (3) of 5 U.S.C. 552a, to enable the individual to seek correction or deletion of information about himself/herself in the record which he/she considers to be erroneous. If a request for amendment is denied after a final determination, the individual may file a "statement of dispute," to be noted in the pertinent records and to be shown in connection with disclosures of such records. Individuals have a statutory right to obtain administrative review of denials of requests for amendment, and by 32 CFR Part 701, Subparts F and G, are accorded the right to obtain similar review of denials of requests for notification and access.

(ii) The provisions of this section apply to requests by individuals, or their authorized representatives, for records pertaining to themselves that are contained in systems of records. 32 CFR Part 701, Subparts F and G, does not, however, require that an individual be given notification or access to a record that is not retrieved by name or other individual identifier. Requests for amendment of records contained in a system of records will normally be processed in accordance with 32 CFR Part 701, Subparts F and G, unless: (A) They are routine requests for administrative corrections not specifying that they are not made under 32 CFR Part 701, Subparts F and G or 5 U.S.C. 552a, or (B) they are requests addressed to the Board for Correction of Naval Records, which is governed by other authority.

(2) *System rules.* Systems managers are responsible for ensuring that, for each system of records maintained, a records system notice is published in the FEDERAL REGISTER, stating the procedures by which an individual may be notified whether the system contains records pertaining to him/her. Additionally, systems managers are responsible for establishing, and making available to individuals upon request, rules applicable to requests for access or amendment of records within each system. Such rules must conform to the requirements of 32 CFR Part 701, Subparts F and G, and to matters indicated in §§ 701.111 and 701.112. In addition, they should contain the following:

(i) A statement of custodial officials other than the system manager, if any, authorized to grant requests for notification or access;

(ii) The minimum formal requirements for requests, including applicable requirements for requests to be reduced to writing; and, in the case of a request to provide the requester's records directly to an authorized representative who is other than the parent of a minor, or other legal guardian—an authorization signed within the past 45 days specifying the records to be released and the recipient of the records (notarized authorizations may be required if the sensitivity of the information in the records warrants);

(iii) The information which should be provided by the individual to assist in identifying relevant systems of records and the individual identifiers (e.g., full name, social security number, etc.) needed to locate records in the particular system; and,

(iv) The requirements for verifying the requester's identity, to which the following policies apply:

(A) Prior to being given notification or access to personal information, an individual is required to provide reasonable verification of his/her identity. No verification of identity, however, shall be required of an individual seeking notification or access to records which are otherwise available to any member of the public under 32 CFR Part 701, Subparts A through D.

(B) In the case of an individual who seeks notification, access, or amendment in person, verification of identity will normally be made from those documents that an individual is likely to have readily available, such as an employee or military identification card, driver's license, or medical card.

(C) When notification, access, or amendment is requested by mail, verification of identity may be obtained by requiring the individual to provide certain minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know. If the sensitivity of the information in the record warrants, a signed and notarized statement of identity may be required.

(D) When a record has already been identified, an individual shall not be denied notification or access solely for refusing to disclose his/her social security number.

(3) *Responsibilities for action on initial requests.* (i) Subject to the provisions of this paragraph and the applicable system manager's rules, requests for notification and access may be granted by officials having custody of the records, even if they are not systems managers or denial authorities. Requests for amendment may be granted by the cognizant system manager. Denials of initial requests for notification, access, or amendment of records under 32 CFR Part 701, Subparts F and G, however, may be made only by those officials designated as denial authorities under § 701.102(c).

(ii) Investigative/non-investigative records.

(A) Copies of investigative records that are compiled by an investigative organization, but are in the temporary custody of another organization, which is holding the record for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the originating investigative organization. Upon completion of the official action, the investigative reports are required to be destroyed or returned, in accordance with the instructions of the originating investigative activity. Individuals seeking notification or access, or making other requests under 32 CFR Part 701, Subparts F and G, concerning such records, shall be directed to the originating investigative organization. For example, a request for notification or access to a Naval Investigative Service report in the temporary custody of another activity should be forwarded directly to the Director, Naval Investigative Service.

(B) Copies of non-investigative records (including medical and/or personnel) located in the files of another agency must be referred for release determination. The originating agency may either authorize the records' release by the agency that located them or request that they be referred for processing. The individual requesting his/her records will be notified of records referred for processing.

(4) *Blanket requests not honored.* Requests seeking notification and/or access concerning all systems of records within the Department of the Navy, or a component thereof, shall not be honored. Individuals making such requests shall be notified that: (i) Requests for notification and/or access must be directed to the appro-

priate system manager for the particular record system, as indicated in the current FEDERAL REGISTER systems notices (a citation should be provided), and (ii) requests must either designate the particular system of records to be searched, or provide sufficient information for the system manager to ascertain the appropriate system. Individuals should also be provided with any other information needed for obtaining consideration of their requests.

(5) *Criteria for determinations.* (i) As further explained in § 701.108, portions of designated records systems (indicated in Subpart G of this part) are exempt, in certain circumstances, from the requirement to provide notification, access, and/or amendment. Only denial authorities (and the designated review authority) may exercise an exemption and deny a request, and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose served by denying the request. A request for notification may be denied only when an applicable exemption has been exercised by a denial or review authority. A request for access may be denied by a denial or review authority, in whole or part, on the basis of the exercise of an applicable exemption or for the reasons set forth in paragraph (a)(5) (ii) or (iii) of this section.

(ii) Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority (or the designated review authority) may deny an individual's request for access to that record pursuant to subsection (d)(5) of 5 U.S.C. 552a: *Provided,* That there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(iii) As indicated in § 701.103(e), where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this section. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and § 701.105, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian. (Members of the naval service, once properly accepted, are not minors for the purposes of 32 CFR Part 701, Subparts F and G.)

(iv) Subject to the provisions of this section, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse affect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(6) *Time requirements for making acknowledgements and determinations.* (i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) of receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he/she may expect to be advised of action taken on the request. No separate acknowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10 working-day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determinations and required action on initial requests for notification, access or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

(b) *Notification procedures*—(1) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request, because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified, or the individual has not furnished the information needed to locate a record within the system; or

(C) The request is erroneously addressed to an official having no responsibility for the record or system of records in question;

Inform the individual of the correct means, or additional information needed, for obtaining consideration of his/her request for notification.

(ii) Notify the individual, in writing, whether the system of records contains a record pertaining to him/her (a notification that a system of records contains no records pertaining to the individual shall not be deemed a denial);

(iii) If it is determined that notification should be denied under an available exemption and the official is not a denial authority, forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(iv) If the official is a denial authority, take the appropriate action prescribed in paragraph (b)(2) of this section.

(2) *Action by denial authority.* (i) If the denial authority determines that no exemption is available or that an available exemption should not be exercised, he/she shall provide the requested notification, or direct the system manager or appropriate custodial official to do so.

(ii) If the denial authority determines that an exemption is applicable and that denial of the notification would serve a significant and legitimate governmental purpose (e.g., avoid interfering with an on-going law enforcement investigation), he/she shall promptly send the requesting individual an original and one copy of a letter stating that no records from the systems of records specified in the request are available to the individual under the 5 U.S.C. 552a. The letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter to the:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for requesting the review.

(iii) A copy of the letter denying notification shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as appropriate. These officials shall maintain copies of all denial letters in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(3) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for notification, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. That official is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination. Within 30 working days of receipt of the request for review, whenever practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final determination and the action thereon. If the final determination is to grant notification, the Judge Advocate General may either provide the notification or direct the system manager to do so. If the final determination is to deny notification, the individual shall be informed that it has been determined

upon review that there are no records in the specified systems of records that are available to him/her under the Privacy Act.

(c) *Access procedures*—(1) *Fees.* When a copy of a record is furnished to an individual in response to a request for access, he/she will normally be charged duplication fees only. When duplication costs for a Privacy Act request total less than $30, fees may be waived automatically. Normally, only one copy of any record or document will be provided.

(i) Use the following fee schedule:

Office copy (per page)	$.10
Microfiche (per fiche)	.25

(ii) Checks or money orders to defray fees/charges should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(iii) Do not charge fees for:

(A) Performing record searches.

(B) Reproducing a document for the convenience of the Navy.

(C) Reproducing a record in order to let a requester review it if it is the only means by which the record can be shown to him/her (e.g., when a copy must be made in order to delete information).

(D) Copying a record when it is the only means available for review.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for access, the system manager or other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified or the individual has not furnished the information needed to locate a record within a system; or

(C) The request is erroneously addressed to an official not having responsibility for granting access to the record or system of record in question; Inform the individual of the correct means, or additional information needed, for obtaining consideration or his/her request for access.

(ii) If it is determined that the individual should be granted access to the entire record requested, the official shall inform the individual, in writing, that access is granted, and shall either:

(A) Inform the individual that he/she may review the record at a specified place and at specified times, that he/she may be accompanied by a person of his/her own choosing to review the record (in which event he/she may be asked to furnish written authorization for the record to be discussed in the accompanying person's presence), and that he/she may further obtain a copy of the record upon agreement to pay a duplication fee; or

(B) Furnish a copy of the record, if the individual requested that a copy be sent and agreed in advance to pay duplication fees unless such fees are waived.

(iii) If it is necessary to deny the individual access to all or part of the requested record, and,

(A) The official is not a denial authority—forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(B) The official is a denial authority—take the action prescribed in paragraph (c)(3) (ii) or (iii) of this section.

(3) *Action by denial authority*—(i) If the denial authority determines that access should be granted to the entire record, he/she shall promptly make it available to the requesting individual in the manner prescribed in paragraph (c)(2)(ii) of this section, or direct the system manager to do so.

(ii) If the denial authority determines that access to the entire record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), or (iii) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing the individual of the denial of access and the reasons therefor, including citation of any applicable exemptions and a brief discussion of the significant and legitimate governmental purpose(s) served by the denial of access. The denial letter shall also inform the individual that he/she may request further administrative review of the matter within 120 days from the date of the denial letter, by letter:

(A) If the record is from a civilian Official Personnel Folder or is contained on any other OPM form, to:

Director, Bureau of Manpower, Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(B) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file, to:

General Counsel, Department of the Navy, Washington, D.C. 20360; or

(C) If for any other record, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for seeking review of the initial determination.

(iii) A copy of the denial letter shall be forwarded directly to the Chief of Naval Operations (Op-09B1) or the Commandant of the Marine Corps (Code M), as provided in paragraph (b)(2)(iii) of this section.

(iv) If the denial authority determines that access to portions of the record should be denied under the criteria specified in paragraph (a)(5)(i), (ii), (iii) of this section, he/she shall promptly make an expurgated copy of the record available to the requesting individual and issue a denial letter as to the portions of the record that are required to be deleted.

(4) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for access, the Judge Advocate General or the General Counsel shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He/she is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination.

(i) Within 30 days of receipt of the request for review, if practicable, the Judge Advocate General or the General Counsel shall inform the requesting individual, in writing, of the final determination and the action thereon.

(ii) If such a determination has the effect of granting a request for access, in whole or in part, the Judge Advocate General or the General Counsel may either provide access in accordance with paragraphs (c)(2)(ii)(A) or (B) of this section, or direct the system manager to do so.

(iii) If the final determination has the effect of denying a request for access, in whole or part, the individual shall be informed of the reason(s) and statutory basis for the denial—including regulatory citations for any exemption exercised and an explanation of the significant and legitimate governmental purpose served by exercising the exemption—and his/her rights to seek judicial review.

(iv) If the determination is based, in whole or part, on a security classification, the individual shall be apprised of the matters set forth in § 701.9(d)(4)(ii) of this part relating to declassification review and appeal.

(d) *Amendment procedures*—(1) *Criteria for determinations on requests for amendment.*

(i) As further explained in § 701.108, many of the systems of records listed in Subpart G of this part, are exempt, in part, from amendment requirements. Such exemptions, where applicable, may be exercised only by denial authorities (and by the designated review authorities upon requests for review of initial denials), and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose to be served by exercising the exemption.

(ii) If an available exemption is not exercised, an individual's request for amendment of a record pertaining to himself/herself shall be granted if it is determined, on the basis of the information presented by the requester and all other reasonably available related records, that the requested amendment is warranted in order to make the record sufficiently accurate, relevant, timely, and complete as to ensure fairness in any determination which may be made about the individual on the basis of the record. If the requested amendment would involve the deletion of particular information from the record, the information shall be deleted unless it is determined that—in addition to being accurate, relevant to the individual, timely, and complete—the information is relevant and necessary to accomplish a purpose or function required to be performed by the Department of the Navy pursuant to a statute or Executive order.

(iii) The foregoing is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any changes in such records should be made only through the procedures established for changing such records. These provisions are also not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, an individual would not be permitted to challenge a courts-martial conviction under this instruction, but the individual would be able to challenge the accuracy with which a conviction has been recorded in a record.

(iv) The procedures in paragraph (d) of this section, may be applied to requests for amendments of records contained in a system of records: *Provided*, That it can be identified and located.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon recept of an individual's initial request to amend a record, the system manager (or official occupying a comparable position with respect to a record not contained in a system of records) shall acknowledge the request in the manner prescribed by paragraph (a)(6)(i) of this section, and, within 30 days, if reasonably possible, take one of the following actions:

(i) If consideration cannot be given to the request because:

(A) The individual's identity is not satisfactorily verified:

(B) The individual has not furnished the information needed to locate the record;

(C) The individual has not provided adequate information as to how or why the record should be amended; or

(D) The request is erroneously addressed to an official having no responsibility for the record or systems of records in question;

Inform the individual of the correct means or additional information needed for obtaining consideration of his/her request for amendment (a request may not be rejected, nor may the individual be required to resubmit his/her request, unless this is essential for processing the request).

(ii) If the system manager determines that the individual's request to amend a record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly amend the record and advise the individual, in writing, of that action and its effect. (The system manager also should attempt to identify other records under his/her responsibility affected by the requested amendment, and should make other necessary amendments, accordingly.) Amendments to records should be made in accordance with existing directives and established procedures for changing records, if applicable and consistent with 32 CFR Part 701, Subpart F. The system manager shall advise previous recipients of the record from whom a disclosure accounting has been made that the record has been amended, and of the substance of the correction.

(iii) If the system manager is a denial authority, and denial of the request for amendment, in whole or part, is warranted, take the appropriate action prescribed in paragraph (d)(3)(ii) or (iii) of this section; or

(iv) If the system manager is not a denial authority, but denial of the request for amendment, in whole or part, appears to be warranted, forward the request to the cognizant denial authority with a copy of the disputed record, and comments and recommendations concerning disposition.

(3) *Action by denial authority.* (i) If the denial authority determines that amendment of the record is warranted

under the criteria in paragraph (d)(1) of this section, he/she shall direct the system manager to take the action prescribed in paragraph (d)(2)(ii) of this section.

(ii) If the denial authority determines that amendment of the record is not warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing him/her of the denial of the request and the reason(s) for the denial, including a citation of any exemption exercised and a brief discussion of the significant and legitimate governmental purpose(s) served by exercising the exemption. The denial letter shall inform the individual that he/she may request further administrative review of the matter, as follows:

(A) If the record is a fitness report or performance evaluation (including proficiency and conduct marks) from a military personnel file—by letter, within 120 days from the date of the denial letter, to:

Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy, Washington, D.C. 20350; or

(b) If the record is from a civilian Official Personnel Folder or is contained in any other Office of Personnel Management form—by letter, within 120 days from the date of the denial letter, to:

Director, Bureau of Manpower Information Systems, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415; or

(C) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file—by letter, within 120 days from the date of the denial letter, to:

General Counsel, Department of the Navy, Washington, D.C. 20360.

(D) For any other record—by letter, within 120 days from the date of the denial letter, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA "2332.

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the reasons for seeking review of the initial determination denying the request for amendment. A copy of the denial letter shall be forwarded to the Chief of Naval Operations or the Commandant of the Marine Corps, as provided in paragraph (b)(2)(ii) of this section.

(iii) If the denial authority determines that a request for amendment of a record should be granted in part and denied in part, he/she shall take the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is denied.

(4) *Action by reviewing authority.* Upon receipt of a request for review for a determination denying an individual's initial request for amendment of a record, the Assistant Secretary of the Navy (Manpower and Reserve Affairs), the General Counsel, or the Judge Advocate General, as appropriate, shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination, either granting or denying amendment, in whole or in part. Those officials are designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and effectuate the determination.

(i) Within 30 working days of receipt of the request for review, the designated reviewing official shall inform the requesting individual, in writing, of the final determination and the action thereon, except that the Assistant Secretary of the Navy (Manpower and Reserve Affairs) may authorize an extension of the time limit where warranted because a fair and equitable review cannot be completed within the prescribed period of time, or for other good cause. If an extension is granted, the requesting individual shall be informed, in writing, of the reason for the delay, and the approximate date on which the review will be completed and the final determination made.

(ii) If, upon completion of review, the reviewing official determines that denial of the request of amendment is warranted under the criteria in paragraph (d)(1) of this section, the individual shall be informed, in writing:

(A) Of the final denial of the request for amendment of the record, and the reason(s) therefor;

(B) Of the right to file with the appropriate system manager a concise statement of the individual's reason(s) for disagreeing with the decision of the agency, and that such statement of dispute must be received by the system manager within 120 days following the date of the reviewing authority's final determination;

(C) Of other procedures for filing such statement of dispute, and that a properly filed statement of dispute will be made available to anyone to whom the record is subsequently disclosed, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record;

(D) That prior recipients of the disputed record, to the extent that they can be ascertained from required disclosure accountings, will be provided a copy of the statement of dispute and, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record; and

(E) Of his/her right to seek judicial review of the reviewing authority's refusal to amend a record.

(iii) If the reviewing official determines upon review that the request for amendment of the record should be granted, he/she shall inform the requesting individual of the determination, in writing, and he/she shall direct the system manager to amend the record accordingly, and to inform previous recipients of the record for whom disclosure accountings have been made that the record has been amended and the substance of the correction.

(5) *Statements of dispute.* When an individual properly files a statement of dispute under the provisions of paragraphs (d)(4)(ii) (B) and (C) of this section, the system manager shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute. The system manager shall advise previous recipients of the record for whom accounting disclosure has been made that the record has been disputed, if the statement of dispute is germane to the information disclosed, and shall provide a copy of the individual's statement, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record.

(i) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains provided the record is integrally annotated as required above. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the system manager shall note that the information is disputed, and provide a copy of the individual's statement of dispute.

(ii) The system manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. Although these summaries may be treated as part of the individual's record, they will not be subject to the amendment procedures of this section.

§ 701.105 Disclosure to others and disclosure accounting.

(a) *Summary of requirements.* Subsection (b) of 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except pursuant to the written request or consent of the individual to whom the record pertains, unless the disclosure is authorized under one or more of the 11 exceptions noted in paragraph (b) of this section. Subsection i(1) of 5 U.S.C. 552a outlines criminal penalties (as prescribed in 32 CFR 701.110) for personnel who knowingly and willfully make unauthorized disclosures of information about individuals from an agency's records. Subsection (c) of 5 U.S.C. 552a requires accurate accountings to be kept, as prescribed in paragraph (c) of this section, in connection with most disclosures of a record pertaining to an individual (including disclosures made pursuant to the individual's request or consent). This is to permit the individual to determine what agencies or persons have been provided information from the record, enable the agency to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail for review of the agency's compliance with 5 U.S.C. 552a.

(b) *Conditions of disclosure.* No record contained in a system of records shall be disclosed, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls within one of the exceptions. Where the record subject is mentally incompetent, insane, or deceased, no medical record shall be disclosed except pursuant to a written request by, or with the prior written request of, the record subject's next of kin or legal representative, unless disclosure of the record falls within one of the exceptions. Disclosure to third parties on the basis of the written consent or request of the individual is permitted, but not required, by 32 CFR Part 701, Subparts F and G.

(1) *Intra-agency.* Disclosure may be made to personnel of the Department of the Navy or other components of the Department of Defense (DOD) (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DOD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) This may include, for example, disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Navy who may be included are: Personnel of the Joint Chiefs of Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between Naval components and non-DOD agencies in connection with the Personnel Exchange Program (PEP) and inter-agency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by paragraph (b) of this section might also meet the criteria for disclosure under other exceptions specified in paragraphs (b)(2) through (12) of this section, they should be treated under paragraph (b)(1) of this section for disclosure accounting purposes.

(2) *Freedom of Information Act.* Disclosure may be made of those records, or information obtained from records, required to be released under the provisions of 5 U.S.C. 552 and 32 CFR Subparts A through D. Disclosure accountings are not required when information is disclosed under the Freedom of Information Act. That act has the general effect of requiring the release of any record which does not fall within one of the nine exemptions specified in Subpart A, § 701.5(b)(4)(ii), including an exemption for records which, if disclosed, would result in a clearly unwarranted invasion of the personal privacy of an individual. The phrase "clearly unwarranted invasion of personal privacy" states a policy which balances the interest of individuals in protecting their personal affairs from public scrutiny against the interest of the public having available information relating to the affairs of government. The interests of the recipient or of society must be weighed against the degree of

the invasion of privacy. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (e.g., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage ot time since the event which is the topic of the record (e.g., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester. Examples of information pertaining to civilian personnel, which normally are released without an unwarranted invasion of privacy are: Name, grade, date of grade, gross salary, present and past assignments, future assignments which have been finalized, and office phone number. Disclosure of other personal information pertaining to civilian employees shall be made in accordance with 5 CFR Parts 293, 294, 297, and the Federal Personnel Manual. Determinations as to disclosure of personal information regarding military personnel shall be made using the same balancing test as explained above. The following are examples of information concerning military personnel which can normally be released without the consent of the individual upon request, as they are a matter of public record: name, rank, gross salary, present and past duty assignments, future assignments which are finalized, office phone number, source of commission, promotion sequence number, awards and decorations, education (major area of study, school, year of education, and degree), duty status at any given time, date of birth, marital status, and number, names, sex and ages of dependents.

(i) Disclosure of home addresses and home telephone numbers without permission shall normally be considered a clearly unwarranted invasion of personal privacy. Accordingly, disclosure pursuant to 5 U.S.C. 552 is normally prohibited. Requests for home addresses (includes barracks and Government-provided quarters) may be referred to the last known address of the individual for reply at the person's discretion. In such cases, requesters will be notified accordingly.

(ii) Disclosure is permitted pursuant to the balancing test when circumstances of a case weigh in favor of disclosure. Disclosure of home address to individuals for the purpose of initiating court proceedings for the collection of alimony or child support, and to state and local tax authorities for the purpose of enforcing tax laws, are examples of circumstances where disclosure could be appropriate. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(iii) Lists or compilations of names and home addresses, or single home addresses will not be disclosed without the consent of the individual involved, to the public including, but not limited to, individual Members of Congress, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at the individual's discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overriding interests of the individual involved.

(iv) An individual shall be given the opportunity to elect not to have his/her home address and telephone number listed in a Navy activity telephone directory. The individual shall also be excused from paying additional cost that may be involved in maintaining an unlisted number for Government-owned telephone services if the individual complies with regulations providing for such unlisted numbers. However, the exclusion of a home address and telephone number from a Navy activity telephone directory does not apply to the mandatory listing of such information on a command's recall roster.

(v) Commands are permitted to disclose, to *military personnel within the command only*, the results of and the names of individuals receiving non-judicial punishment. Such disclosure is not considered to be a violation of 5 U.S.C. 552a.

(3) *Routine use.* Disclosure may be made for a "routine use" (as defined in § 701.103(k)) that is compatible with the purpose for which the record is collected and listed as a routine use in the applicable record system notice published in the FEDERAL REGISTER. Routine use encompasses the specific ways or processes in which the information is used, including the persons or organizations to whom the record may be disclosed, even if such use occurs infrequently. In addition to the routine uses established by the Department of the Navy for each system of records, common blanket routine uses, applicable to all record systems maintained within the Department of the Navy, have been established. *See* § 701.114. In the interest of simplicity and economy, these blanket routine uses are published only once at the beginning of the Department of the Navy's FEDERAL REGISTER compilation of record systems notices rather than in each system notice. Disclosure accountings are required for all disclosures made pursuant to the routine use.

(4) *Bureau of the Census.* Disclosure may be made to the Bureau of the Census for purpose of planning or carrying out a census of survey or related activity authorized by law. Disclosure accountings are required for disclosures made to the Bureau of the Census.

(5) *Statistical research or reporting.* Disclosure may be made to a recipient who has provided adequate written assurance that the record will be used solely as a statistical research or reporting record, provided the record is transferred in a form that is not individually identifiable (i.e., the identity of the individual cannot be deduced by tabulation or other methodology). The written request must state the purpose of the request, and will be made a part of the activity's accounting for the disclosure. When activities publish gross statistics concerning a population in a system of records (e.g., statistics on employer turnover rates, military reenlistment rates, and sick leave usage rates), these are not considered disclosures of records and accountings are not required.

(6) *National Archives.* Disclosure may be made to the National Archives when the record has sufficient historical or other value to warrant continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value. (Records transferred to a federal records center for storage or safekeeping do not fall under the provision. Such transfers are not considered disclosures under this Act, since the records remain under the control of the transferring element. Therefore, disclosure accounting is not required for transfers of records to federal records centers.) Disclosure accountings are required for disclosures made to the National Archives.

(7) *Civil or criminal law enforcement activity.* Disclosure may be made to another agency or instrumentality of any government jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the activity which maintains the record, specifying the particular record desired and the law enforcement purpose for which the record is sought. The head of the agency or instrumentality may have delegated authority to request records to other officials. Requests by these designated officials shall be honored if they provide satisfactory evidence of their authorization to request records. Blanket requests for all records pertaining to an individual shall not be honored. A record may also be disclosed to a law enforcement activity:

Provided, That such disclosure has been established as a "routine use" in the published record system notice. Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this section, but may be made only pursuant to established "blanket routine uses" contained in § 701.114, pursuant to an established "routine use" published in the individual record system notice, or pursuant to other governing authority. Disclosure accountings are required for disclosure to civil or criminal law enforcement agencies, and also for disclosures pursuant to a routine use, but need not be disclosed to the individual if the law enforcement agency has requested in writing that it not be.

(8) *Emergency conditions.* Disclosure may be made under emergency conditions involving compelling circumstances affecting the health and safety of a person, provided that notification of the disclosure is transmitted to the last known address of the individual to whom the record pertains. For example, an activity may disclose records when the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of a person. The individual about whom the records are disclosed need not necessarily be the individual whose health or safety is in peril (e.g., release of dental charts on several individuals in order to identify a person injured in an accident). In instances where information under alleged emergency conditions is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call. Disclosure accountings are required for disclosures made under emergency conditions.

(9) *Congress and Members of Congress.* Disclosure may be made to either House of Congress, or, to the extent of matters within its jurisdiction, to any committee or subcommittee thereof, or to any joint committee of Congress or subcommittee thereof. Disclosure may not be made, however, to a Member of Congress requesting in his/her individual capacity or on behalf of a constituent, except in accordance with the following rules:

(i) Upon receipt of an oral or written request from a Member of Congress or his/her staff, inquiry should be made as to the identity of the originator of the request. If the request was prompted by a request for assistance by the individual to whom the record pertains, the request information may be disclosed to the requesting Congressional office.

(ii) If the request was originated by a person other than the individual to whom the record pertains, the Congressional office must be informed that the requested information cannot be disclosed without the written consent of the individual to whom the record pertains. If the Congressional office subsequently states that it has received a request for assistance from the individual or has obtained the individual's written consent for disclosure to that office, the requested information may be disclosed.

(iii) If the Congressional office requests the Department of the Navy to obtain the consent of the individual to whom the record pertains, that office should be informed that it is the policy of the Department not to interfere in the relationship of a Member of Congress and his/her constituent, and that the Department therefore does not contact an individual who is the subject of a congressional inquiry.

(iv) If the Congressional office insists on Department of the Navy cooperation, an effort should be made to contact, through his/her command, the individual to whom the records pertain and ascertain whether the individual consents to the disclosure. If neither the Congressional office nor the Department of the Navy obtains the individual's written consent, only information required to be released under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D should be disclosed.

Disclosure accountings are required for disclosures made to Congress or Members of Congress, except nonconsensual disclosures pursuant to 5

U.S.C. 552 provided for in paragraph (b)(9)(iv) of this section.

(10) *Comptroller General.* Disclosure may be made to the Comptroller General of the United States, or to any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office. *See* § 701.101(a)(2) and the SECNAVINST 5741.2 series. Disclosure accountings are required for disclosures to the Comptroller General or General Accounting Office.

(11) *Court of competent jurisdiction.* Disclosure may be made in response to an order from a court of competent jurisdiction (signed by a state or Federal court judge), subject to the following provisions:

(i) When a record is disclosed under compulsory legal process, and the issuance of that order is made public by the court which issued it, activities shall make reasonable efforts to notify the individual to whom the record pertains of the disclosure and the nature of the information provided. This requirement may be satisfied by notifying the individual by mail at the last known address contained in the activity records. Disclosure accountings are required for disclosures made pursuant to court orders.

(ii) Upon being served with an order which is not a matter of public record, an activity shall seek to be advised as to when it will become public. An accounting for the disclosure shall be made at the time the activity complies with the order, but neither the identity of the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the concerned individual unless the court order has become a matter of public record.

(12) *Disclosure of records to contractors.* The disclosure of records required by the contractor for the operation, use or maintenance of a system of records in the performance of a government contract shall not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record since systems of records operated under contract to accomplish a Navy function, is in effect, maintained by the Department of the Navy. Disclosure of personal information between the Department of the Navy and the contractor is considered to be the same as between those officers and employees of the Department of the Navy who have a need for the records in the performance of their duties.

(c) *Disclosure accountings*—(1) *Responsibilities.* With respect to a disclosure of a record which it maintains in a system of records, each activity is responsible for keeping an accurate accounting of the date, nature, and purpose of the disclosure, and the name and address of the person or agency to whom the disclosure is made. When disclosure is made by an activity other than the activity that is responsible for maintaining the record, the activity making the disclosure is responsible for giving written notification of the above information to the activity responsible for maintaining the record, to enable the latter activity to keep the required disclosure accounting.

(2) *Disclosures for which accountings are required.* A disclosure accounting is required for all disclosures of records maintained in a system of records, except: Intra-agency disclosures pursuant to paragraph (b)(1) of this section; Freedom of Information Act disclosures pursuant to paragraph (b)(2) of this section or paragraph (b)(9)(iv) of this section; or disclosure pursuant to paragraph (b)(12) of this section; or disclosures for statistical research or reporting purposes pursuant to paragraph (b)(5) of this section. A disclosure accounting is required for a disclosure made to another person or agency pursuant to the request or consent of the individual to whom the record pertains. There is no requirement for keeping an accounting for disclosures of disclosure accountings.

(3) *Accounting method.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. For most paper records, it may be suitable to maintain the accounting on a record-by-record basis, physically affixed to the records. The primary criteria are that the selected method be one which will:

(i) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(ii) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(iii) Provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart.

(4) *Retention of accounting record.* A disclosure accounting, if one is required, shall be maintained for the life of the record to which the disclosure pertains, or for at least five years after the date of the disclosure for which the accounting is made, whichever is longer. Nothing in 5 U.S.C. 552a or 32 CFR Part 701, Subparts F and G requires retaining the disclosed record itself longer than for the period of time provided for it in the SECNAVINST 5212.5 series, but the disclosure accounting must be retained for at least five years.

(5) *Accounting to the individual.* Unless an applicable exemption has been exercised, systems managers or other appropriate custodial officials shall provide all information in the disclosure accounting to an individual requesting such information concerning his/her records, except entries pertaining to disclosures made pursuant to paragraph (b)(11)(ii) of this section and disclosures made at the written request of the head of another agency or government instrumentality for law enforcement purposes under paragraph (b)(7) of this section. Activities should maintain the accounting of the latter two types of disclosures in such a manner that the notations are readily segregable, to preclude improper release to the individual. The process of making the accounting available may also require transformation of the data in order to make it comprehensible to the individual. Requests for disclosure accountings otherwise available to the individual may not be denied unless a denial authority for the designated review authority has exercised an applicable exemption and denied the request, and then only when it has been determined that denial of the request would serve a significant and legitimate Government purpose (e.g., avoid interfering with an ongoing law enforcement investigation). Appropriate procedures prescribed in § 701.104(b), for exercising an exemption, denying a request and reviewing a denial apply also to disclosure accounting to the individual.

(d) *Accuracy requirements.* Prior to disclosing any record about an individual to any person other than to personnel of the agency, with a need to know, and other than pursuant to 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D, reasonable efforts are required to ensure that such records are accurate, complete, timely, and relevant for Department of the Navy purposes. It may be appropriate to advise the recipient that the information was accurate as of a specific date, or otherwise give guidance concerning its quality.

(e) *Mailing lists.* No activity nor any member or employee of the Department of the Navy shall sell or rent individuals' names and addresses unless such action is authorized by law. This provision should not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 701.106 Collection of personal information from individuals.

(a) *Collection directly from the individual.* Personal information shall be collected, to the greatest extent practicable, directly from the individual when the information may adversely affect an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made when warranted. The following are examples, not necessarily exhaustive, of situations which may warrant exceptions:

(1) There is need to ensure the accuracy of information supplied by an individual by verifying it through a third party, e.g., verifying information for a security clearance;

(2) The nature of the information is such that it can be obtained only from a third party, such as supervisor's assessment of an employee's perform-

ance in a previous job or assignment; or

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) *Informing individuals from whom personal information is requested.* (1) Individuals who are asked to supply personal information about themselves for a system of records must be advised of:

(i) The authority (statute or Executive order) which authorizes the solicitation;

(ii) All major purposes for which the Department of the Navy uses the information (e.g., pay entitlement, retirement eligibility, or security clearance);

(iii) A brief summary of those routine uses to be made of the information as published in the FEDERAL REGISTER and distributed by current OPNAVNOTE 5211, and

(iv) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to respond.

(2) This statement, which is referred to as a "Privacy Act statement," must be given regardless of the medium used in requesting the information, e.g., a blank sheet, preprinted form with a control number, format, questionnaire, survey sheet, or interview. It may be provided on the form used to collect the information, or on a separate form or sheet, a copy of which may be retained by the individual. There is no requirement that the individual sign the statement.

(3) When the Privacy Act statement is to be attached or provided with the form, the statement will be assigned the same identifying number as the form used in collecting the information, and the suffix, "Privacy Act Statement." For example, a DD Form 398 would be identified as "DD Form 398—Privacy Act Statement . . .' For unnumbered formats, such as questionnaires and survey report forms, the Privacy Act statement will bear the report control symbol, if one applies, or the OMB number, i.e., "OMB Approval No. 21-R0268, Privacy Act Statement." The statement will be positioned in such a manner that individuals from whom the information is being collected will be informed about the act before they begin to furnish any of the information requested.

(4) For the purpose of determining whether a Privacy Act statement is required, "personal information" should be considered to be information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. *See* § 701.105(b)(2). It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his/her Federal employment or military assignment.

(5) The head of the proponent activity (i.e., the initiating or sponsoring activity) is responsible for determining whether a Privacy Act statement is required, and for ensuring that it is prepared and available as an attachment or as a part of the form, etc.

(c) *Social Security Numbers*—(1) *Requesting an individual's social security number (SSN).* Department of the Navy activities may not deny an individual any right, benefit, or privilege provided by law because the individual refuses to disclose his/her SSN, unless such disclosure is required by Federal statute or, in the case of systems of records in existence and operating before January 1, 1975, where such disclosure was required under statute or regulation adopted prior to January 1, 1975 to verify the identity of an individual. E.O. 9397 authorizes this Department to use the SSN as a system of numerical identification of individuals.

(2) *Informing an individual when requesting his/her SSN.* When an individual is requested to disclose his/her social security number, he/she must be given a statement containing information required in paragraph (b) of this section.

(3) An activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act statement for the SSN, alone, or a merged Privacy Act statement, covering both the SSN and other items of

personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the activity must be prepared to identify the individual by alternate means.

(4) Once a military member or civilian employee of the Department of the Navy has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into naval service or employment, the SSN becomes his/her service or employment identification number. It is not required that such an individual be informed of the items under paragraph (b)(1) of this section when he/she is subsequently requested to provide or verify this identification number in connection with those records.

§ 701.107 Safeguarding personal information.

(a) *Legislative requirement.* The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is required.

(b) *Responsibilities.* At each location, and for each system of records, an official shall be designated as having responsibility for safeguarding the information therein. Specific safeguards for individual systems must be tailored to the existing circumstances, with consideration given to sensitivity of the data, need for continuity of operations, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc.

(c) *Minimum safeguards.* Ordinarily, personal information should be afforded at least the protection required for information designated as "For Official Use Only." For privacy, the guideline is to provide reasonable safeguards to prevent inadvertent or unauthorized disclosures of record content, during processing, storage, transmission, and disposal.

(d) *Automatic data processing.* The Chief of Naval Operations (Code Op-942) is responsible for determining and formulating policies and procedures, as necessary, to ensure that ADP systems containing personal information contain adequate safeguards to protect personal privacy, and are in accordance with the OPNAVINST 5239.1 series and SECNAVINST 5239.1 series.

(e) *Disposal*—(1) *General.* Reasonable care must be taken to ensure that personal information is not subject to unauthorized disclosure during records disposal. Records which contain personal information pertaining to individuals should be disposed of in such a manner as to preclude recognition or reconstruction of information contained therein, such as by pulping, tearing, shredding, macerating or burning. Records recorded on magnetic tapes or other magnetic media may be disposed of by degaussing or erasing. If contractors are hired to haul trash containing personal information, contract provisions as specified in § 701.109(a) should be incorporated into the contract. If paper trash containing personal information is sold for recycling, legal assistance should be obtained to insert in the sale contract clauses that will make the buyer a Government contractor subject to the provisions of 5 U.S.C. 552a.

(2) *Massive computer cards and printouts.* (i) The transfer of large quantities of computer cards and printout in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under this instruction. The volume of such data when turned over in bulk transfers make it difficult, if not impossible, to identify a specific individual record. Therefore, there are no special procedures required when disposing of large numbers of punch cards, computer printouts or other large detailed listings and normal document disposal procedures may be followed.

(ii) If the systems manager believes that the data to be transferred in bulk for disposal is in a form where it is individually recognizable or is not of a sufficient quantity to preclude compromise, the records should be disposed of in accordance with this paragraph.

§ 701.108 Exemptions.

(a) *Summary.* Subsections (j) and (k) of 5 U.S.C. 552a authorize the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements of 5 U.S.C. 552a. In accordance with 32 CFR Part 701, Subpart E, publication of a general notice of a proposed rule concerning exemptions for systems of records is required to appear in the FEDERAL REGISTER at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 32 CFR Part 701, Subpart G, indicates the systems designated as exempted, the type of exemption claimed, the authority and reasons for invoking the exemption, and the provisions of 5 U.S.C. 552a from which each system has been exempted. The two categories of exemptions are general and specific. No system of records, however, is automatically exempt from all provisions of 5 U.S.C. 552a.

(b) *General exemption.* To be eligible for a general exemption under the authority of subsection (j)(2), 5 U.S.C. 552a, the system of records must be maintained by an activity whose principal function involves the enforcement of criminal laws and must consist of:

(1) Data, compiled to identify individual criminals and alleged criminals which consists only of identifying data and arrest records and type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Data that supports criminal investigations (including efforts to prevent, reduce, or control crime) and reports of informants and investigators that identify an individual; or

(3) Reports on a person, compiled at any state of the process of law enforcement, from arrest or indictment through release from supervision.

(c) *Specific exemptions.* To be eligible for a specific exemption under the authority of subsection (k), 5 U.S.C. 552a, the pertinent records within a designated system must contain one or more of the following:

(1) Information specifically authorized to be classified. Before denying a person access to classified information, the denial authority must make sure that it is properly classified under the criteria of E.O. 12065, and that it must remain so in the interest of national defense or foreign policy ((k)(1) exemption).

(2) Investigative records compiled for law enforcement purposes (other than that claimed under the general exemption). If this information has been used to deny someone a right, however, the Department of the Navy must release it unless doing so would reveal the identity of a confidential source ((k)(2) exemption).

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. Sec. 3056 ((k)(3) exemption).

(4) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(5) Data, compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).

(7) Information to determine promotion potential in the Armed Forces. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source ((k)(7) exemption).

(d) *Limitations on denying notification, access, and/or amendment on the basis of an exemption*—(1) *Classified information.* Prior to denying a request for notification, access or amendment concerning a classified record on the basis of a subsection (k)(1) exemption, denial authorities having classification jurisdiction over the classified matters in the record shall review the record to determine if the classification is proper under the criteria of the OPNAVINST 5510.1 series. If the denial authority does not have classification jurisdiction, immediate coordination shall be effected with the official having classification jurisdiction, in order to obtain a review of the propriety of the classification. If it is determined upon review that the classification is proper, consideration shall also be given to the appropriateness of permitting the requester to view the record in classified form: *Provided*, That he/she has or can be given the requisite security clearance.

(2) *Law enforcement records.* Requests for notification or access shall not be denied on the basis of a subsection (k)(2) exemption if the requested record has been used as a basis for denying the individual a right, benefit, or privilege to which he/she would be entitled in the absence of the record, except that access may be limited to the extent necessary to protect the identity of a confidential source, as defined in paragraph (e) of this section. Additionally, neither a subsection (j)(2) nor a subsection (k)(2) exemption shall be the basis for a denial of a request for notification or access concerning a record, or a portion thereof, unless granting the request is in accordance with the exemptions specified in 5 U.S.C. 552a, and would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source in the course of a criminal investigation or in the course of a lawful national security intelligence investigation;

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their effectiveness;

(vi) Endanger the life or physical safety of law-enforcement personnel; or

(vii) Otherwise be deemed not releasable under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D.

(e) *Confidential sources.* For the purposes of subsection (k) exemptions, a "confidential source" is a person who has furnished information to the Federal government under:

(1) An express promise that his/her identity would be held in confidence, or

(2) An implied promise made prior to September 27, 1975, that his/her identity would be held in confidence.

(f) *Promises of confidentiality.* Express promises of confidentiality shall be granted on a selective basis, and only when such promises are needed and are in the interest of the service. Officials exercising denial authority shall establish appropriate procedures and standards governing the granting of confidentiality for records systems under their cognizance.

§ 701.109 Contractors.

(a) *Contracts to maintain records.* Any unit, activity, or official letting a contract that involves the maintenance of a system of records to accomplish a Department of the Navy purpose shall include in that contract such terms as are necessary to incorporate the relevant provisions of 5 U.S.C. 552a in accordance with Defense Acquisition Regulation 1-327, "Protection of Individual Privacy," July 1, 1976.

(b) *Contracting officers.* Contracting officers shall review all requirements for service contracts to determine if the requirements may result in the design, development, or operation of a system of records on individuals. If it is determined that such is involved, the solicitation to meet the requirement shall contain notice similar to the following:

WARNING

This procurement action requires the contractor to do one or more of the following: operate, use or maintain a system of records on individuals to 1974 (Pub. L. 93-597; 5 U.S.C. 552a) imposes requirements on how these records are collected, maintained, used, and disclosed. Violations of the Privacy Act may result in termination of any contract resulting from this solicitation as well as imposition of criminal or civil penalties.

§ 701.110. Judicial sanctions.

(a) Subsection (i)(1) of 5 U.S.C. 552a prescribes criminal penalties for violation of its provisions. Any member or employee of the Department of the Navy may be found guilty of a misdemeanor and fined not more than $5,000 for willfully:

(1) Maintaining a system of records without first meeting the public notice requirements.

(2) Disclosing information protected under the Privacy Act to any unauthorized person/agency.

(3) Obtaining or disclosing information about an individual under false pretenses.

§ 701.111 Rules of access to agency records.

5 U.S.C. 552a, as implemented in 32 CFR Part 701, Subparts F and G, provides for individuals to have access to agency records, pertaining to themselves, with certain limited exceptions. The following rules of access are in effect:

(a) Requests for access must be submitted in writing to (*name or organizational title of record custodian*).

(b) Individuals desiring to review records pertaining to themselves are urged to submit their requests by mail or in person, 10 days before the desired review date. Every effort will be made to expedite access when necessary, but records ordinarily cannot be made available for review on the day of the request. In the case of a request to provide records directly to an authorized representative who is other than the parent of a minor of other legal guardian, an authorization signed within the preceding 45 days, by the individual to whom the records pertain, specifying the records to be released, will be required. Notarized authorizations may be required if the sensitivity of the information in the records warrants.

(c) Information should be provided by the individual to assist in identifying relevant systems of records and individual indentifiers should also be furnished (e.g., full name, social security number, etc.) to locate records in the particular system.

(d) Review of the record may be accomplished between the hours of —— and —— in room —— of building ——.

(e) When the individual reviews records in person, the custodian will require the presentation of indentification before permitting access to the record. Acceptable forms of identification include military identification card, base or building pass, driver's license, or similar document. When the individual requests access to information by mail, verification of identity may be obtained by requiring him/her to provide certain minimum identifying data such as date of birth and any other item in the record that only the concerned individual would likely know.

(f) Individuals may be accompanied by a person of their own choosing when reviewing the record. The custodian will not, however, discuss the record in the presence of the third person without the written authorization of the individual to whom the record pertains.

(g) On request, copies of the record will be provided at a cost specified. Fees will not be assessed if the cost is less than $30.

(h) A medical record will not be released to the individual if, in the judgment of a physician, the information contained therein could have an adverse affect on the individual's physical or mental well-being. In such circumstances, the individual will be asked to provide to the record custodian the name of a personal physician along with written authorization for release of the record to that physician. The record then will be provided to the named physician.

(i) Questions concerning these Rules of Access, or, information contained in the record, should be addressed to (*title or official of organizational title*), room ——, building ——, telephone number ——.

§ 701.112 Rules for amendment requests.

5 U.S.C. 552a, as implemented by 32 CFR Part 701, Subparts F and G, provides for individuals to request amendment of their personal records when the individuals believe the records are inaccurate, irrelevant, untimely, or in-

complete. The following rules for amendment requests are in effect:

(a) Requests must be in writing and must indicate that they are being made under the Privacy Act (5 U.S.C. 552a), 32 CFR Part 701, Subparts F and G, or the SECNAVINST 5211.5 series. Requests should contain sufficient information to locate and identify the particular record which the requester is seeking to amend (e.g., full name, social security number, date of birth, etc.). A request should also contain a statement of the changes desired to be made to the record, the reasons for requesting amendment, and any available information the requester can provide in support of the request, including pertinent documents and related records.

(b) Requests for amendment must be submitted to the appropriate system manager designated in the published record system notice.

(c) A letter indicating receipt will be sent to the requester within 10 working days after the request has been received by the appropriate system manager. The letter will contain details as to when the requester may expect to be advised of action taken on the request. The requester may also be asked to provide additional verification of his/her identity. This is to protect the privacy of other individuals by ensuring that the requester is seeking to amend his/her own records and not, inadvertently or intentionally, the records of another individual.

(d) A letter indicating whether or not the request for amendment has been granted will be sent to the requester as soon as a decision has been reached by the appropriate authority. If it is determined that the requested amendment is warranted, the requester will be advised of the action taken and of the effect of that action. If it is determined that the requested amendment is not warranted, the requester will be advised of the reasons for the refusal and of the procedures and time limits within which the requester can seek further review of the refusal.

§ 701.113 Rules of conduct under the Privacy Act.

(a) *Maintaining personal records.* It is unlawful to maintain systems of records about individuals without prior announcement in the FEDERAL REGISTER. Anyone who does is subject to criminal penalties up to $5,000. Even with such notice, care shall be taken to keep only such personal information as is necessary to do what law and the President, by Executive order, require. The information is to be used only for the purposes described in the FEDERAL REGISTER.

(b) *Disclosure.* Information about an individual shall not be disclosed to any unauthorized individual. Anyone who makes an unauthorized disclosure on purpose may be fined up to $5,000. Every member or employee of the Department of the Navy who maintains records about individuals has an obligation to do his/her part in protecting personal information from unauthorized disclosure. 32 CFR Part 701, Subparts F and G, describe when disclosures are authorized.

(c) *Individual access.* Every individual, with certain exceptions, has the right to look at any record the Department of the Navy keeps on him/her, to copy it, and to request to have it corrected if he/she considers it wrong. The individual attempting to exercise these rights shall be given courteous and considerate assistance.

(d) *Ensuring accuracy.* The Department of the Navy has an obligation to use only accurate, timely, relevant, and complete information when making decisions about individuals. Every member, official, and employee involved in keeping records on individuals shall assist in the discharge of this obligation.

§ 701.114 Blanket routine uses.

(a) *Routine use—Law enforcement.* In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(b) *Routine use—Disclosure when requesting information.* A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information, relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) *Routine use—Disclosure of requested information.* A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine use—Congressional inquiries.* Disclosure from a system of records maintained by this component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine use—Within the Department of Defense.* A record from a system of records maintained by this component may be disclosed as a routine use to other components of the Department of Defense if necessary and relevant for the performance of a lawful function such as, but not limited to, personnel actions, personnel security actions and criminal investigations of the component requesting the record.

(f) *Routine use—Private relief legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine use—Disclosures required by international agreements.* A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(h) *Routine use—Disclosure to state and local taxing authorities.* Any information normally contained in IRS Form W-2, which is maintained in a record from a system of records maintained by this Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.C., Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76-07.

(i) *Routine use—Disclosure to the Office of Personnel Management (OMP).* A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the OPM concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for OPM to carry out its legally authorized Government-wide personnel management functions and studies.

Subpart G—Privacy Act Exemptions

AUTHORITY: 5 U.S.C. 552a, 32 CFR 286a.

SOURCE: 48 FR 38626, Aug. 25, 1983, unless otherwise noted.

§ 701.115 Purpose.

32 CFR Part 701, Subparts F and G contains rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and Subpart F, § 701.108, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.116 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempted from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under E.O. 12356 and that is required by that Executive order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.117 Exemptions for specific Navy records systems.

(a) *Office of the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity).*

(1) *ID—N05527-5.*

Sysname. Navy Central Clearance Group (NCCG) Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k) (1) and (5).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, or access to classified information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(2) *ID—N05520-3.*

Sysname. Civilian Personnel Security Files

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a (k)(1), (2), and (5).

Reasons. Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information compiled for law enforcement purposes in this system of records could interfere with orderly investigations by disclosing the existence of investigations and investigative techniques, and result in the concealment, destruction, or fabrication of evidence.

(b) *Naval Military Personnel Command.*

(1) *ID—N05520-1.*

Sysname. Personnel Security Eligibility Information System

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a (k)(1), (2), (5) and (7).

Reasons. Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide information to the Government under an express or implied promise of confidentiality.

(2) *ID—N01610-1.*

Sysname. Navy Personnel Evaluation System

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (5), and (7).

Reasons. Granting individuals access to information collected and maintained in this system could result in disclosure of classified material, jeopardize the safety of informants and witnessess and their families, and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified material and to information that will not disclose the sources who provided the information under an express or implied promise of confidentiality.

(3) *ID—N05354-1.*

Sysname. Equal Opportunity Information and Support System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), and (5).

Reasons. Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(4) *ID—N01420-1.*

Sysname. Officer Promotion System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(5) *ID—N01070-3.*

Sysname. Navy Personnel Records System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Granting individuals access to certain portions of the information collected and maintained in this system of records could result in the unauthorized disclosure of classified material. Material will be screened in order to provide access to unclassified information that does not disclose the identity of a source who provided information under an express or implied promise of confidentiality.

(6) *ID—N01640-1.*

Sysname. Individual Correctional Records.

Exemption. Portions of this system are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to portions of these records pertaining to consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods, used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(c) *Navy Recruiting Command.*

(1) *ID—N01131-1.*

Sysname. Officer Selection and Appointment System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

Reasons. Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(2) *ID—N01133-2.*

Sysname. Recruiting Enlisted Selection System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (5), (6), and (7).

(d) *Naval Security Group Command.*

(1) *ID—N05527-4.*

Sysname. Naval Security Group Personnel Security/Access Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) through (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(e) *Naval Investigative Service.*

(1) *ID—N05520-4.*

Sysname. NIS Investigative Files System.

Exemption (1). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority (1). 5 U.S.C. 552a (j)(2).

Reasons (1). Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this Component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of the other cited provisions.

Exemption (2). Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2). 5 U.S.C. 552a (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6).

Reasons (2). The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record. The notice for this system of records published in the FEDERAL REGISTER sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the FEDERAL REGISTER in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(f) *Naval Intelligence Command.*

(1) *ID—N03834-1.*

Sysname. Special Intelligence Personnel Access File.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1) and (5).

Reasons. Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

(g) *Office of the Chief of Naval Operations.* (1) *ID-N04385-1:*

Sysname. Investigatory (Fraud) System.

Exemption. Portions of this system of records are exempt from the following portions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) and (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justices, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of the Act.

(h) *Naval Resale System Office.*

(1) *ID—N012930-1.*

Sysname. Industrial Relations Personnel Records.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d), (e)(4) (G) and (H), and (f).

Authority. 5 U.S.C. 552a(k) (5) and (6).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(i) *Navy and Marine Corps Exchanges and Commissaries.*

(1) *ID—N04060-1.*

Sysname. Navy and Marine Corps Exchange and Commissary Security Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a(k)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(j) *Naval Clemency and Parole Board.*

(1) *ID—N05819-3.*

Sysname. Naval Clemency and Parole Board Files.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(4), (d), (e)(4)(G), and (f).

Authority. 5 U.S.C. 552a(j)(2).

Reasons. Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(k) *Office of the Secretary.*

(1) *ID—N01070-9.*

Sysname. White House Support Program.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(1), (2), (3), and (5).

Reasons. Exempted portions of this system may contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his/her identify would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law-enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(l) *Security Operations Activities.*

(1) *ID—N05527-1.*

Sysname. Security Incident System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(m) *Naval Medical Command.*

(1) *ID—N06320-2.*

Sysname. Family Advocacy Program System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C 552a: (c)(3) and (d).

Authority. 5 U.S.C. 552a (k)(2) and (5).

Reasons. Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interefere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the indentification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(n) *Naval Postgraduate School.*

(1) *ID-N05300-3.*

System name. Faculty Professional Files.

Exemption. Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a: (c)(3), (d), e(4), (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5).

Reasons. Exempted portions of this system contain information considered relevant and necessary to make a determination as to the qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

[48 FR 38626, Aug. 25, 1983, as amended at 49 FR 13350, Apr. 4, 1984; 51 FR 11019, Apr. 1, 1986]

§ 701.118 Exemptions for specific Marine Corps records systems.

(a) ID—MMN00018.

Sysname. Base Security Incident Reporting System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority. 5 U.S.C. 552a (j)(2).

Reasons. Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reasons therefor, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) ID—MIN00001.

Sysname. Personnel Security Eligibility and Access Information System.

Exemption. Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority. 5 U.S.C. 552a (k)(2), (3), and (5) as applicable.

Reasons. Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

Exempted portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

PART 705—PUBLIC AFFAIRS REGULATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031.

SOURCE: 41 FR 29101, July 15, 1976, unless otherwise noted.

§ 705.1 Purpose.

The regulations and rules in this part prescribe policies and procedures for the Department of the Navy pertaining to public affairs practices.

§ 705.2 Chief of Information and the Office of Information (CHINFO).

(a) The Chief of Information is the direct representative of the Secretary of the Navy and of the Chief of Naval Operations in all public affairs and internal relations matters. As such, the Chief of Information has the authority to implement public affairs and internal relations policies and to coordinate Navy and Marine Corps public affairs and internal relations activities of mutual interest.

(b) The Chief of Information will keep Navy commands informed of Department of Defense policies and requirements. No command within the Department of the Navy, except Headquarters, Marine Corps, will deal directly with the Office of the Assistant Secretary of Defense (Public Affairs) on public affairs matters unless authorized to do so by the Chief of Information.

(c) The Chief of Information will be consulted on all Navy public affairs and internal relations matters and informed of all operations and proposed plans and policies which have national or international (and in the case of audio-visual material, regional) public affairs aspects.

(d) The Chief of Information heads the Navy Office of Information, the Navy Internal Relations Activity (NIRA), the Office of Information Branch Offices (NAVINFOs), the Navy Public Affairs Center (NAVPACENs) and the Fleet Home Town News Center (FHTNC). In addition, the Chief of Information has responsibility (on behalf of the Secretary of the Navy as Executive Agent for the Department of Defense) for the High School News Service and has operational control of the U.S. Navy Band, Washington, D.C.

(e) The Navy Office of Information Branch Offices (NAVINFOs) are located in Atlanta, Boston, Chicago, Dallas, Los Angeles, and New York. As representatives of the Secretary of the

Navy, Chief of Naval Operations, and Chief of Information, the NAVINFOs have a primary mission of providing direct liaison with local and regional mass communications media.

(1) The function of the NAVINFOs are as follows:

(i) Establish and maintain close personal relationships with local television, radio, film, publishing, and other mass-media organizations including minority-group-oriented media.

(ii) Seek ways through these media to inform the public about naval personnel and activities.

(iii) Provide assistance to media organizations and respond to their interest in Navy programs, stories, and features. In this regard, maintain informal liaison with various information offices afloat and ashore in order to respond to requests from local media representatives, particularly those from inland areas, who desire to visit fleet units or activities ashore.

(iv) Provide advice on Navy cooperation and assistance, as appropriate, to representatives of national industrial and commercial organizations, including advertising agencies.

(v) Maintain a library of Navy motion picture films for use by local television stations, distribute news films and audio material, and otherwise perform normal audio-visual functions at the local level.

(vi) Provide personnel and other assistance as appropriate, to special Command Information Bureaus and public information staffs of other naval activities as directed by the Chief of Information.

(vii) Advise the Chief of Information on current trends and significant problems relating to local media requirements.

(viii) Seek ways to support the long-range goals and immediate priorities of the Navy.

(ix) Provide advice and assistance in the placement of news and feature materials to the field activities of the Navy Recruiting Command.

(x) Perform such other tasks as may be assigned by the Chief of Information.

(2) Additionally, NAVINFO Los Angeles is the Navy representative for all appropriate liaison with motion picture and network television offices in the Hollywood area. Naval activities will channel all requests for information or assistance from these media to NAVINFO Los Angeles, which will coordinate with CHINFO.

(3) Additionally, NAVINFO New York is the Navy representative for all appropriate liaison with television and radio networks in the New York area and with magazine and book publishers in that area. Requests for assistance originating from these media should be directed to NAVINFO New York, which will coordinate with CHINFO.

(4) Except as specifically directed by CHINFO, the Branch Offices do not have responsibility or authority for community relations or internal relations.

(5) Direct liaison between NAVINFOs and Naval District public affairs offices, Navy recruiters and other naval activities afloat and ashore is encouraged.

(f) Areas covered by the respective offices are:

(1) NAVINFO Atlanta: Alabama, the District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and Southern West Virginia.

(2) NAVINFO Boston: Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

(3) NAVINFO Chicago: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota Wisconsin, and Northern West Virginia.

(4) NAVINFO Dallas: Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

(5) NAVINFO Los Angeles: Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(6) NAVINFO New York: Connecticut, Delaware, New Jersey, New York, and Pennsylvania.

(g) The Navy Public Affairs Centers (NAVPACENs) are located in Norfolk and San Diego. The centers have a primary mission of producing Navy stories for dissemination to the media through normal information channels.

(1) The following tasks are included among the functions of the NAVPACENs.

(i) Produce written, audio and photographic feature public information material about fleet and shore personnel, units and activities, as coordinated with and approved for policy and concept by the respective fleet and shore commander concerned.

(ii) Serve as public affairs emergency reaction teams/resource personnel responsive to the requirements of the CNO and CHINFO, and when feasible and appropriate and as approved by CNO or CHINFO, serve as public affairs emergency reaction teams/resource personnel in support of Fleet Commanders.

(iii) Develop feature material to support the long range goals and the immediate priorities of the Navy. Direct liaison is authorized with the Navy Recruiting Command, Recruiting Areas, Recruiting Districts, and other Commanders as appropriate to achieve this function.

(iv) Perform such other tasks as may be assigned by the Chief of Information.

(2) NAVPACENs will have no public affairs news media responsibilities which conflict with the basic public affairs responsibilities of Fleet Commanders-in-Chief. Specifically, NAVPACENs are excluded from responding to news media queries, releasing news information, arranging news media embarkations, or any other day-to-day news media services concerning the respective fleets. These responsibilities remain with the Fleet Commander.

(3) NAVPACENs have no direct responsibility or authority for community relations or internal relations and shall defer in these areas to the cognizant Naval District Commandant.

(4) Direct liaison with Fleet Commanders-in-Chief and NAVINFOs is appropriate and authorized. As approved by the Fleet CINCs, direct liaison with forces afloat and shore activities under the Fleet CINCs is appropriate.

(5) NAVPACENs will carry out their missions and functions in such a manner as not to interfere with the public affairs responsibilities of the District Commandants.

[44 FR 6389, Feb. 1, 1979]

§ 705.3 [Reserved]

§ 705.4 Communication directly with private organizations and individuals.

(a) Questions from the public and requests from groups or individuals for pamphlets, photos, biographies, historical matter, etc., must be promptly answered. (32 CFR Part 701, Subparts A-D refers.)

(b) Assistance within the command's capabilities should (and in some cases, must) be given. Where an established channel for obtaining the item exists, such as a publication stocked by the Superintendent of Documents (Government Printing Office), or photos, as explained in the subparagraph below, the requester may be directed to it. Under some circumstances, a charge may be made. (Consult Part 701 or the command's Freedom of Information authority for details.) If a lengthy search, beyond the convenient manpower resources of the command, would be required, the requester may be offered the opportunity of examining the material at the command instead of copies being made.

(c) If a request is refused, the reason must be fully and courteously explained, as required by Part 701 of this chapter.

(d) Copies of released U.S. Navy photos may be purchased by the general public.

(1) Photos made within the last 10 years may be purchased from the Naval Photographic Center. Information on the conditions of sale can be obtained by writing to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, D.C. 20390.

(2) Photos made more than 10 years prior to the current date may be purchased from the National Archives. Details are available from: Audio-Visual Branch National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.5 Taking of photos on board naval ships, aircraft and installations by members of the general public.

(a) Visitors will not be allowed to take photographic equipment on board a naval ship or aircraft or into a naval activity or to take photographs within a naval jurisdiction unless specially authorized by the officer in command or higher authority.

(b) Guests of the Navy who wish to take photos within naval jurisdictions will be advised of areas where photography is permitted. An escort will be assigned to assure that security is maintained, unless photography is permitted throughout the ship, aircraft or installation, or the areas in which it is not permitted are appropriately guarded or secured.

(c) If there is reason to believe that film exposed by a visitor or media photographer contains classified information, the film will be processed under Navy jurisdiction.

(1) Classified photos, if any, will be retained. All unclassified film will be returned to the owner.

(2) When film exposed by civilian visitors or media representatives in sensitive areas is beyond the capability of the local command to process, it may be forwarded to the Commanding Officer, Naval Photographic Center, for processing. Any special processing instructions should be sent with the film.

§ 705.6 Releasing public information material to the media.

(a) Methods of releasing information:

(1) Release at the seat of government and/or as approved by the Assistant Secretary of Defense (Public Affairs).

(i) Overall responsibility for release of information rests with the Assistant Secretary of Defense (Public Affairs). The Chief of Information is responsible for coordinating with him releases of national and international interest (and in the case of audiovisual material of regional interest) and for arranging for local release of such material if considered appropriate by OASD(PA). Information of the above types and also information proposed for release at the seat of government, with the exception of "spot news," as described in paragraph (b) of this section, following.

(2) Releases by local commands:

(i) News of purely local interest may be released by the command concerned. Higher and coordinating authorities (such as the District Commandant) will be informed, when appropriate, that the release has been made.

(ii) News of national or other wide interest may be released by a local command under the following circumstances:

(A) The Assistant Secretary of Defense (Public Affairs), having approved a release, directs that it be issued by the command concerned.

(B) An event of immediate and urgent news interest, such as a disasterous accident, occurs at the command, and emergency announcements must be made as delay in issuing information would be against the best interests of the Navy. The officer in command will make a "spot news" release of all appropriate information considered releasable.

(*1*) Copies of spot news releases made (or a description if the announcement is made orally) will be forwarded promptly to the Chief of Information.

(*2*) If the situation is considered critical, the spot news release will be forwarded by telephone or message.

(b) Means through which information is released to media:

(1) Navy oriented information material (written, taped, motion picture, still photo) is regularly released to all media presumed to be interested.

(2) Similar material is provided in response to query from a news media representative. The material may be produced by the Navy, or the newsman may be assisted in researching, filming, etc. himself.

(3) Exclusive releases:

(i) Information concerning naval activities may be provided on an exclusive basis only when a specific request or inquiry is received from one news media representative for material not requested by other media.

(ii) In such cases, and assuming that the information is properly releasable, the following rules will apply:

(A) If prior to the time information is given to the newsman making the original inquiry or request substantially similar inquiries or requests are received from other newsmen, the first inquirer will be so informed, and subsequent inquirers will be advised that a prior request has been received. None of the inquirers will be told the identity of the individuals or media who have placed these similar inquiries.

(B) If not more than three similar requests are received, the information will be provided simultaneously to each inquirer.

(C) If more than three requests for substantially the same information have been received before any are answered, inquirers will be advised as soon as possible that the information cannot be given on an exclusive or limited basis, and a general release covering the subject will be issued to all media.

(4) News conferences:

(i) A news conference is held when a command has something specific to announce to the press that cannot be handled in a news release or by phone call. A news conference should not be called just to get together with the press. A request from the press is also a reason for conducting a news conference. Special events, significant operations or serious accidents are frequent reasons for calling news conferences. If requested, spokesmen may be made available to the press for questions without specific subject matter in mind, but the press should be clearly informed of the nature of this meeting. Technically, this is not considered a news conference.

(ii) When a news conference is held, it is essential that all interested media be invited to attend.

(iii) A record of what is said should be kept. Ideally, the news conference should be tape recorded and a public affairs officer should be present.

(iv) Official spokesmen will be prepared to answer questions in a frank and candid manner. If the answer would compromise military security, the inquirer should be so advised. If the answer is not known to the spokesman, he should say so and add that the matter will be checked and any available unclassified information provided later.

(v) Newsmen are not normally asked to submit their questions in advance. If this is considered advisable, as in cases where highly technical answers may be required, the answers are prepared in advance and given to all attending newsmen (not just the questioner) at the news conference.

(5) Interviews. These are similar to news conferences except that they involve a single newsman (who has usually requested the interview) and a single Navy spokesman.

(i) Required procedures are essentially the same as for news conferences. However, a public affairs officer should be present only if desired by the person being interviewed. The interview may be taped, if the newsman agrees.

(ii) Without penalizing initiative displayed by a newsman in asking pertinent questions, care should be exercised by the naval spokesman not to make a major revelation of news material to a single media outlet in the course of a routine interview.

(iii) If major areas of difficulty arise in the interview, the Chief of Information should be notified of them.

(6) Background briefings; "Not for attribution"; or "Off the record."

(i) Since there is a possibility or risk of a misunderstanding arising in these briefings, it is important that all concerned understand and agree to the ground rules.

(ii) In general, information will not be made public unless it can be openly attributed to the Navy and disseminated without reservation. Occasionally, a backgrounder may be helpful. An example is a briefing of embarked newsmen in advance of an operation, providing information which may not be reported until the operation is over. The purpose is to help the newsmen understand the operation while it is taking place.

§ 705.7 Radio and television.

(a) Navy relationships with radio and TV representatives are of two types:

(1) Dissemination to them of Navy produced tapes, photos, films, etc.

(This is discussed in more detail in § 705.17).

(2) Cooperation with them when they produce a program on a Navy subject. This is discussed in the paragraph following:

(b) Requirement for approval by higher authority.

(1) Commanding officers may:

(i) Release audiovisual material which is spot news, as defined in § 705.6(a)(2)(ii) preceding, or is of purely local interest.

(ii) Participate in local community audiovisual projects of benefit to the Department of Defense or in the national interest.

(iii) Approve one-time, one-station participation by personnel of their commands (as individuals) in programs of purely local interest.

(2) All other audiovisual material originated by the Department of the Navy or requiring Navy cooperation must be approved by the Chief of Information, who will effect the necessary coordination and/or approval of the Assistant Secretary of Defense (Public Affairs).

(i) Requests for assistance from nongovernmental audiovisual media will be forwarded, with the maximum available details and an evaluation of the request, through the chain of command to the Chief of Information.

(ii) No direct coordination or contact between local naval commands and the Assistant Secretary of Defense (PA) is authorized unless specifically provided for by separate directives or correspondence.

(c) Navy cooperation in productions by audiovisual media representatives (nongovernment).

(1) The production or project must:

(i) Be consistent with the goals and aims of the Department of Defense and/or be in the national interest.

(ii) Portray military operation, historical incidents, persons and places, in such a manner as to give a true portrayal and interpretation of military life.

(iii) Comply with accepted standards of dignity and propriety in the industry.

(2) There will be no deviation from established safety standards.

(3) Operational readiness shall not be impaired.

(4) Official activities of military personnel assisting the production must be within the scope of normal military activities. Exceptions to this policy will be made only in unusual circumstances.

(5) Diversion of ships, equipment, personnel and material resources from normal military locations or military operations will not normally be authorized for filming. Exceptions to such policy must be authorized by the Assistant Secretary of Defense (Public Affairs), through the Chief of Information.

(i) The production company concerned must reimburse the government for any extra expense involved. A strict accounting of the additional expenses incurred and charged to the production company must be maintained by the designated project officer. A copy of this accounting will be forwarded to the Chief of Information.

(6) Naval material and personnel will not be employed in such a manner as to compete with commercial and private enterprise. In this regard, any person or agency requesting their use will furnish a noncompetitive certification.

(7) Additional details on procedures will be found in DOD Instruction 5410.16.

(8) In addition to cooperation requested by the media, commands will be alert to the advantages of providing Navy programming and/or encouraging participation by Navy personnel in local radio and TV programming. Examples are community forums, local talent shows, educational and religious programs, children's shows, sports programs, etc.

(d) Participation by individual Navy personnel on radio or TV programs:

(1) In general, such participation is encouraged if it is:

(i) Dignified and considered in the interests of the Navy.

(ii) Compatible with operational commitments.

(iii) Not in competition with the regular employment of professional performers.

(2) The public affairs officer will screen requests for such appearances for members of his command to see that the programs are in good taste, and that neither the Navy nor its personnel are exposed to embarrassment for the sake of entertainment.

(3) Approval of participation by Navy individuals:

(i) Approval is not required for personnel attending audience participation broadcasts if they are selected at random from the audience.

(ii) One-time, one-station participation of purely local interest may be approved by the officer in command concerned.

(iii) If participation will be on a network (defined as more than one station, even if local) of if the same person or program is requested by two or more unrelated stations, approval by the Chief of Information must be obtained even if the show is of local interest only.

(e) Use of official footage:

(1) Use of official U.S. Navy stock film footage on TV broadcasts is not authorized without approval and clearance by the Chief of Information and the Department of Defense.

(2) Use of Navy public information motion pictures cleared for TV is authorized and encouraged except that such films may be used on subscription or pay TV only when offered to the viewers at no cost.

(3) Navy films will not be cut or portions duplicated for TV use in lieu of stock footage without prior approval by the Chief of Information.

(f) Music clearance. The Navy assumes no responsibility for clearance of music used on Navy recordings, transcriptions, or films not specially produced or authorized for radio or TV broadcast.

(g) Disclaimers. A disclaimer is not necessary if a product is advertised on a program in which the Navy participates, but there must be no stated or implied endorsement of it by the Navy or by naval personnel appearing on the program.

(h) Requests for courtesy prints of commercial television programs.

(1) Requests will not be made directly to the producer or network concerned, but will be forwarded to the Chief of Information by the Navy requester.

(2) These courtesy prints will be exhibited only under circumstances which cannot be construed as competitive with commercial ventures.

§ 705.8 Motion pictures.

(a) The rules and procedures given in the preceding for TV will also apply to cooperation with commercial motion picture producers.

(b) The Navy assists in the production of commercial, privately financed, nontheatrical motion pictures of institutional or of educational value to the public. They Navy will not:

(1) Solicit their production.

(2) Provide lists of subjects the Navy considers "desirable."

(3) State that the Navy will use a commercially produced film.

(4) Imply endorsement of a product.

(5) Permit the use of official Navy seals.

(c) Navy assistance to motion pictures and all other audio-visual products produced by Navy contractors will be subject to the same rules and procedures that apply to other non-government producers. Audio-visual products produced by Navy contractors, with or without Navy assistance, will be submitted to the Chief of Information via the appropriate Navy headquarters activity for coordination with the Assistant Secretary of Defense (Public Affairs) for clearance for public release. They will be accompained by five copies of the script and a statement from the producer that costs were paid from corporate (vice contract) funds.

(d) When a commercial film which has been produced with Navy cooperation is screened in a community, local commands can provide Navy exhibits for display in theater lobbies, coordinate displays of recruiting material, and arrange for personal appearances of Department of Defense and Department of the Navy military and civilian personnel, provided such cooperation is approved by the Chief of Information and the Assistant Secretary of Defense (Public Affairs).

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.9 Availability of motion pictures to external audiences.

(a) *Public access.* Navy and Marine Corps general motion pictures and motion picture projects not previously cleared for public exhibition will require clearance by the Chief of Information or the Marine Corps Director of Information, as appropriate, prior to public viewing. Concurrent review of legal rights and instruments associated with the production will be carried out by Patent Counsel, Naval Air Systems Command (AIR-OOP). Cleared motion pictures may also be made available for free loan as determined by the individual services. In addition, cleared motion pictures may be provided for rent or sale through the National Audio-Visual Center, National Archives and Records Service (GSA), Washington, DC 20409.

(b) *Foreign military training.* Motion pictures from the Navy inventory may be made available for foreign military training programs on approval by the Chief of Naval Operations. Classified motion pictures selected for such use will also require a security review by the Chief of Naval Operations.

§ 705.10 Still photography.

(a) Policy and procedures on taking photos by the general public, given in § 705.5 apply also to media representatives.

(b) Basic policy and procedures for still photos are set forth in the Manual of Naval Photography, OPNAVINST 3150 6D.

(c) Authority to forbid photography:

(1) On Navy property, the officer in command may forbid the taking of photographs and may confiscate film, reviewing it if it is suspected that classified material has been photographed. In such cases, all unclassified photos will be returned promptly to the photographer.

(2) Navy personnel have no authority to confiscate film off Navy property. If, as in an accident, classified equipment is exposed which cannot be removed or covered, Navy representatives will ask news media photographers not to photograph it and will inform them of 18 U.S.C. 793(e), 795, 797, which makes it a criminal offense to photograph classified material. Navy personnel will not use force if media photographers refuse to cooperate, but will instead seek the assistance of appropriate civil authorities and/or the photographer's superior in recovering film or photographs presumed to be of classified nature.

(3) If media photographers are uncooperative in regard to protection of classified material, an account of the matter will be forwarded to the Chief of Information.

(d) Release of photographs:

(1) Most unclassified photographs of interest to the public may be released to news media. However, the rights of individuals photographed and special constraints such as those described in section 0403 of the Public Affairs Regulations must be taken into consideration before a decision is made to release a photograph. In addition, photos which might be harmful to recruiting or otherwise not be in the Navy's best interests will not be used unless this failure to release them constitutes suppression of legitimate news.

(2) Photographs of strictly local interest can be made available by the command to local media without being submitted to review by higher authority.

(3) If a feature type photo released locally is considered of possible interest elsewhere, because of its human interest or artistic merit, a single print should be forwarded to the Chief of Information, together with a notation of the distribution made.

(4) Photographs of national interest:

(i) "Spot news" photos may be released by a District Commandant or Fleet or Force Commander.

(ii) If a photo has been released by a local command to national news media:

(A) The original negative or transparency will be forwarded by the fastest available means to the Commanding Officer Naval Photographic Center Naval Station, Washington, D.C. 20390. Such forwarding will be in accordance with the Manual of Naval Photography, par 0445, subparagraphs 3 and 4.

(B) One print, a copy of the letter of transmittal, and the distribution list will be forwarded to the Chief of Information.

(C) Navy units with a Unified Command will forward the photos through Unified Command channels.

(D) All other commands will forward the photos to the Chief of Information who will effect coordination with the Office of the Assistant Secretary of Defense (Public Affairs) and, if necessary, arrange for security review.

(iii) Photography of research activities is normally considered to be of national interest.

(iv) Still photographs of national news interest may be forwarded, unprocessed, for release by the Chief of Information by any command not subject to the authority of a Unified or Specified Commander. Such forwarding will be in accordance with paragraph 0445, subparagraph 3, of the Manual of Naval Photography. All available caption material will be forwarded with this unprocessed photography.

§ 705.11 Supplying photographs and services to other than Navy and Marine Corps.

(a) To avoid competition with civilian photographic organizations, naval aircraft will not be used to take photographs for, nor will photographs or mosaic maps be provided to any individuals, corporations, or agencies other than departments or agencies of the federal government, without specific permission from the Chief of Naval Operations.

(b) In the case of natural catastrophe, or other circumstances where prompt action is required, the senior officer present may authorize a departure from the preceding paragraph. In all such cases, a report of the circumstances will be made to the Chief of Naval Operations.

(c) This policy does not preclude releases to the media, news companies, and others in accordance with established procedures, or the sale of released photographs to private agencies or individuals under existing Department of Defense regulations and Part 701, Subparts A-D, Availability to the public of Department of the Navy Information and Records. Normally, requests by individuals for still photographs and motion picture photography for private use are forwarded to the Commanding Officer, Naval Photographic Center, Naval Station, Washington, DC 20390, for action. Procedures for the collection or authority for waiver of fees for service and material provided are set forth in Volume III, NAVCOMPT Manual, and Part 701, Subparts A-D.

(d) Navy aerial photography released for sale to the public is transferred to the United States Department of the Interior. Inquirers regarding the purchase of this photography should be directed to Chief, Map Information Office, Geological Survey, Department of the Interior, Washington, DC 20025.

(e) Navy training films suitable for sale to the public are transferred to the National Audio-Visual Center, National Archives and Records Service, General Services Administration, Washington, DC 20408. Inquires regarding the sale of Navy training films should be addressed to the National Audio-Visual Center.

(f) This policy does not preclude releases to contractors and others properly engaged in the conduct of the Navy's business. However, when services are performed for other agencies of the government, and under certain conditions, for other military departments, the Navy Comptroller Manual prescribes that such are subject to reimbursement.

(g) All private inquiries from foreign nationals should be returned, advising the addressee to contact his local U.S. Information Service officer for the desired materials.

§ 705.12 Print media.

Requests for reprints of items published in national media will be addressed to the Chief of Information. Commands will be careful not to reproduce on their own authority any copyrighted material without advance permission from the copyright holder.

§ 705.13 Commercial advertising.

(a) The Navy encourages cooperation with advertisers. However, the layout, artwork and text of the proposed advertisement must be submitted to the Chief of Information for review and for clearance by other appropriate authorities.

(b) Requests from commercial enterprises (including those with Navy contracts) for use of Navy personnel, facilities, equipment or supplies for advertising purposes must be referred to the Chief of Information.

(c) Official Navy photos which have been cleared and are released for open publication may be furnished for commercial advertising, if properly identified and captioned. No photos will be taken exclusively for the use of an advertiser.

(d) Navy cooperation in commercial advertising, publicity and other promotional activities will be based on the following requirements.

(1) It must be in accordance with the provisions of 32 CFR Part 721.

(2) It must be in good taste and not reflect discredit on the Navy or the U.S. Government. Statements made must be matters of fact, without misleading information or other objectionable features.

(3) It must not indicate that a product is used by the Navy to the exclusion of similar products offered by other manufacturers or appear to endorse or selectively benefit or favor (directly or indirectly) any private individual, sect, fraternal organization, commercial venture or political group, or be associated with solicitation of votes in a political election. It will not infer Navy responsibility for the accuracy of the advertiser's claims or for his compliance with laws protecting the rights of privacy of military personnel whose photographs, names or statements appear in the advertisement. It will neither indicate that a product has undergone Navy tests nor disclose data from any Navy tests which may have been made.

(4) It may not promote the use of tobacco or alcohol.

(e) Use of uniforms and naval insignias. These may be used provided it is done in a dignified manner.

(f) Use of Naval personnel:

(1) Personnel may receive no compensation.

(2) Personnel will not be inconvenienced or have their training or normal duties interrupted.

(3) Written consent from the person concerned must be obtained before a photo may be used.

(4) Navy civilians and military personnel on active duty may not use their position titles or ranks in connection with any commercial enterprise or endorsement of a commercial product. (Retired personnel and Reserves not on active duty may use their military titles in connection with commercial enterprises if this does not give rise to the appearance of sponsorship of the enterprise by the Navy or Department or in any way reflect discredit upon them.)

(5) Testimonials from naval personnel are not banned, but the person giving the testimonial must not be specifically identified.

(i) The use of name, initials, rank or rate of Navy personnel appearing in testimonial advertising is not permitted, but such expressions as, "says a Navy chief," may be used.

(ii) Care will be taken to ensure that testimonials from Navy personnel are presented in such a way as to make clear that the views expressed are those of the individual and not of the Department of the Navy.

§ 705.14 Embarkation of media representatives.

(a) *General.* (1) Although this paragraph applies primarily to embarkation in ships, provisions which are applicable to embarkation on aircraft or visits to shore installations apply also to those situations.

(2) See also § 705.37 on transportation of non-Navy civilians.

(b) *Invitations to embark.* (1) Invitations should be extended as far in advance as possible and inclusive information on the following should be provided:

(i) Type, scope and duration of operation or cruise.

(ii) Communications, methods of press transmission, and charges, if any.

(iii) Transportation arrangements.

(iv) Approximate cost of meals and/or quarters, and the statement that the newsman will be expected to pay for these and other personal expenses incurred.

(2) It should be made clear to the newsman that there may be limits on movement from one participating unit to another. If helicopters or highline transfers are to be used, their limitations and hazards should be explained.

(3) On operations where security is critical, embarkation of newsmen may be made contingent to their agreement to submit copy for security review. Under such circumstances, the reason for the review will be made clear prior to embarkation, and every effort will be made to avoid any interpretation of such review as "censorship" or interference with freedom of the press.

(c) *Arrangements aboard ship.* (1) Where appropriate, a briefing should be held at the earliest convenient time after embarkation at which newsmen may meet the commanding officer and other key personnel and guests and at which previously supplied information is reviewed.

(2) If feasible, an escort officer will be assigned to each newsman (or group of newsmen having similar requirements).

(3) It should be reported in the ship's newspaper (and on radio and closed-circuit TV, if any) that newsmen will be embarked, giving their names and the media they represent.

(4) If a correspondent is interested in home town material, personnel from his area should be contacted in advance, if possible, to determine if and when they would be available for interviews and photos.

(5) Representatives of press associations and radio and TV networks will be embarked in the Exercise Commander's flagship or the Exercise Control ship, when possible. This ship should also control the ship-to-shore press radio and teletype (RATT).

(6) When more than one representative from the same medium is embarked, an attempt should be made to have them located at separate vantage points.

(d) Communications:

(1) Every effort will be made to provide suitable communication facilities for newsmen embarked (including equipment and personnel, if feasible).

(2) All persons embarked with permission of proper authority and accredited as correspondents are eligible to file press traffic, as authorized by the procedures set forth in Naval Telecommunication Procedures (NTP-9), "Commercial Communications."

(3) Navy radio or wire transmission facilities, where available, may be made available to news media (including accredited civilian photographers) when operational requirements permit, in accordance with instructions set forth by the Director of Naval Communications. This includes making live broadcasts or telecasts. (A live network broadcast or telecast must, however, be approved by the Chief of Information.)

(4) Messages and instructions from editors and station managers to embarked newsmen will be handled as press traffic, as authorized in Naval Telecommunication Procedures (NTP-9).

(5) Stations receiving press circuits will be authorized to receipt for press traffic without asking for time-consuming "repeats."

(6) Under normal circumstances, press copy will be transmitted on a first-come, first-served basis; however, newsmen will be informed that the prerogative of limiting the amount to be filed during any one period rests with the Exercise Commander.

(7) If it becomes necessary for operational reasons for newsmen to pool copy, such messages shall be filed as "multiple address messages" or book messages, as appropriate, or when requested by the newsmen concerned.

(8) If the locale of the exercise permits newsfilm and press mail to be flown ashore, flights should be scheduled on a high priority basis to connect with scheduled commercial air traffic. Operational aircraft as well as scheduled government air flights should be considered for delivery of television news film, radio tapes and photography to the nearest commercial communications facility.

(e) *Voluntary submission of material by a newsman for security review.* When a review is not required but is sought by the newsman, no attempt will be made to delete or change any material, whether or not it appears critical of the Navy or of naval personnel. If any classified information is included, the newsman will be asked to delete it. In addition, his attention will be drawn to any inaccurate or possibly misleading statements.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.15 Employment of Navy personnel as correspondents or staff members of civilian news media.

(a) A member of the naval service on active duty or Navy civilian may act as correspondent for a news periodical or service, radio or TV station or network, or may work part-time for such an organization. The Secretary of the Navy will, however, be immediately informed, via the Chief of Information.

(1) See section 0307 (par. 5), section 0308 (par. 4), and section 0309 (par. 3) of the Navy Public Affairs Regulations for regulations referring to personnel assigned to public affairs staffs receiving compensation for such work.

(2) In time of war, only personnel assigned to public affairs billets and such other personnel as the Secretary of the Navy may authorize can act as correspondents for civilian media.

(b) Military personnel on active duty and Navy civilians may not serve on the staff of a "civilian enterprise" newspaper published for personnel of a Navy installation or activity.

§ 705.16 Navy produced public information material.

(a) *Still photo*—(1) *General.* (i) The policy and procedures given for media produced still photos in § 705.10, apply to Navy produced photos.

(ii) The Office of Information does not issue, nor have funds available for the purchases of, any photographic equipment or supplies for Navy commands. Details on the establishment of authorized laboratories and acquisition of equipment and supplies are given in the Manual of Navy Photography (OPNAVINST 3150.6D).

(2) *Photographic coverage of command events.* (i) If more than two photographers are required to cover a public event, consideration should be given to having them wear appropriate civilian attire.

(ii) Personnel in uniform who are amateur photographers and who are attending the event as spectators will not be discouraged from taking photos.

(3) *Unofficial photos taken by Navy personnel.* (i) The following regulations apply to Navy civilian employees and to Navy personnel in transit through a command, as well as to active duty personnel assigned to the command.

(ii) Personal cameras and related equipment are permitted on Navy ships, aircraft and stations at the discretion of the officer in command.

(iii) An officer in command may screen all photos taken by naval personnel with personal cameras within the jurisdiction of the command to protect classified information or to acquire photos for official use, including public affairs. Photographs taken by bystanders at times of accident, combat, or similar significant events can be valuable for preparation of official report and public release. They should be collected for screening and review as expeditiously as possible.

(iv) Amateur photographers should also be encouraged to volunteer the use of interesting or significant photos for public affairs use.

(v) Photos made by naval personnel, with either personal cameras and film, Navy equipment and film, or any combination thereof, may be designated "Official Navy Photo" if it is considered in the best interests of the Navy.

(A) All precautions will be taken to protect such film from loss or damage, and all unclassified personal photos not designated as "official" will be returned to the owner immediately after review.

(B) When a photo taken by an individual who is not an official photographer is selected for public affairs release:

(*1*) The photographer will receive credit for his work in the same manner as an official photographer.

(*2*) The original negative or transparency will be retained and assigned an official file number. It will then be handled like any other official Navy photograph.

(*3*) At least one duplicate negative or transparency of each unclassified personal photo which has been designated as "official" will be prepared and delivered to the photographer. A black-and-white print may also be prepared for the photographer's personal use.

(b) *Audiovisual.* (1) The Chief of Information releases TV featurettes directly to local TV stations and the Office of Information's Branch Offices (NAV INFO's). After such featurettes have been cleared for public release by the Assistant Secretary of Defense (Public Affairs).

(2) The Assistant Secretary of Defense (PA) must approve, prior to commitment of funds, the initiation of Navy audiovisual productions intended for public release.

(3) Motion picture film.

(i) Film of major news value will be forwarded immediately, unprocessed, to the Commanding Officer, U.S. Naval Photographic Center. The package should be labeled as follows:

NEWS FILM—DO NOT DELAY

Commanding Officer, U.S. Naval Photographic Center (ATTN: CHINFO Liaison), Washington, DC 20374.

NEWS FILM—DO NOT DELAY

The Commanding Officer of the Naval Photographic Center will be advised (with an information copy to the Chief of Information) of its forwarding, the subject, type and amount of footage, method of delivery, and estimated time of arrival in Washington.

(ii) The original negative of motion picture photography of feature value (photography which will not lose its timeliness over a reasonable length of time) will be forwarded to the Naval Photographic Center, and a copy of the forwarding letter will be sent to the Chief of Information.

(c)*Fleet Home Town News Center (FHTNC*). (1) All public affairs officers will assure that appropirate news and photo releases on personnel of their commands are regularly sent to the Fleet Home Town News Center.

(2) Procedures, requirements and formats are contained in CHINFOINST 5724.1.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.17 Participation guidelines.

(a) The provisions of this section refer to participation by naval personnel and use of Navy facilities and material in events sponsored by nongovernment organizations except where otherwise stated.

(b) In accordance with the established responsibilities of local officers in command, these officers will continue to determine whether facilities, equipment and personnel within their cognizance may be provided for such programs (except in the Washington, D.C. area where the Assistant Secretary of Defense (Public Affairs) is the authorizing authority).

(c) Officers in command will ensure that participation is appropriate in scope and type, and is limited to those occasions which are: In keeping with the dignity of the Department of the Navy, in good taste and in conformance with the provisions of Part 721 of this chapter. The national, regional, state or local significance of the event and the agency sponsoring the event will be used as guides in determining the scope and type of Navy participation to be authorized.

(d) Participation in community relations programs is authorized and encouraged to accomplish the aims and purposes as set forth in § 705.18 (following). Where mutually beneficial to the Department of Defense and the public, support authorized and provided is always subject to operational considerations, availability of requested support and the policy guidance provided herein.

(e) Military personnel, facilities, and materiel may be used to support nongovernment public affairs programs when:

(1) The use of such facilities, equipment and personnel will not interfere with the military mission or the training or operational commmitments of the command.

(2) Such programs are sponsored by responsible organizations.

(3) Such programs are known to be nonpartisan in character, and there is no reason to believe that the views to be expressed by the participants will be contrary to established national policy.

(f) The sponsoring organizations or groups will be clearly identified in all cases where naval personnel participate as speakers, or military support is furnished.

(g) Public affairs programs sponsored by civilian organizations will not be cosponsored by a naval command unless expressly authorized by the Chief of Information.

(h) Participation will not normally be authorized in public events when the presence of military participants deprives civilians of employment. Officers in command will screen all requests for use of material and personnel in Navy-sponsored social functions held off military installations.

(i) Navy participation and cooperation must not directly or indirectly endorse, or selectively benefit, or appear to endorse, benefit or favor, any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal, or political organization, or commercial venture, or be associated with the solicitation of votes in a political election.

(1) Providing use of government facilities, such as transportation, housing, or messing, at government expense to private groups is normally interpreted as a selective benefit or favor and is not authorized as part of a community relations program. Therefore, such provisions are normally not authorized as part of a community relations program, even though certain uses of facilities may be authorized under directives on domestic action or other programs.

(2) The above does not bar private groups from providing entertainment on base. However, the appearance must be for entertainment and not for fund-raising, or any political or promotional purpose.

(j) Community relations programs must always be conducted in a manner free from any discrimination because of race, creed, color, national origin, or sex.

(1) Navy participation in a public event is not authorized if admission, seating and other accommodations and facilities are restricted in a discriminatory manner.

(2) Exceptions for participation may be made under certain circumstances for an ethnic or ideological group when they do not entertain any purpose of discriminating against any other group. Any such exceptions must be referred to the Chief of Information for consideration.

(3) Support to nationally recognized veterans' organizations is authorized when the participation is in support of positive programs which are not in themselves discriminatory.

(4) Navy support to nonpublic school activities is authorized when the participation is clearly in support of educational programs or Navy recruiting.

(5) Commands should ensure minority participation in all community relations activities and events, as appropriate. This includes but is not limited to the following:

(i) Ensure that the minority community is aware of the procedure for obtaining Navy support for community events and that they are appraised of the use of Navy demonstration teams, units, and speakers.

(ii) Encourage Navy involvement in, and attention to, local minority community events.

(iii) Continue to cultivate a rapport with key members of all minority communities.

(k) Participation is not authorized if there is fund raising of any type connected with the event, except as provided for in § 705.34.

(l) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit, or exhibit.

(1) When admission is charged, the Armed Forces activity must not be the sole or primary attraction.

(2) A general admission charge need not be considered prohibitory to Navy participation, but no specific or additional charge may be made because of Navy participation.

(3) Participation shall be incidental to the event except for programs of a patriotic nature, celebration of national holidays, or events which are open to the general public at no charge for admission.

(4) The provisions of this paragraph do not apply to the Navy's Blue Angel Flight Demonstration Team or to the Navy Band and other special bands engaged in authorized concert tours conducted at no additional cost to the government.

(m) Some participation in or support of commercially sponsored programs on audio or visual media is allowable. See §§ 705.7 and 705.8.

(n) Some participation which supports commercial advertising, publicity and promotional activities or events is allowable. See section 0405, par. 3 of the Navy Public Affairs Regulations.

(o) Navy speakers may be provided for certain events at which other forms of Navy participation may not be appropriate. See section 0604, par. 8 of the Navy Public Affairs Regulations.

(p) When participation is in the mutual interest of the Navy and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government (travel and transportation of military personnel, meals and quarters, or standard per diem allowances, etc.) will be borne by the sponsor.

(q) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, utilities, or janitorial costs. Other exceptions may be given under unusual circumstances.

(r) Navy participation in professional sports events and post-season bowl games will frequently be authorized at no additional cost to the government, will emphasize Joint Service activity when possible, and must support recruiting programs. Chief of Information approval is required.

(s) Navy participation in public events shall be authorized only when it can be reasonably expected to bring credit to the individuals involved and to the Armed Forces and their recruiting objectives. Naval personnel will not be used in such capacities as ushers, guards, parking lot attendants, runner or messengers, baggage handlers or for crowd control, or in any installations.

(t) Maximum advantage of recruiting potential will be taken at appropriate events for which Navy participation has been authorized.

(u) Navy support will not normally be authorized for commercially-oriented events such as shopping center promotions, Christmas parades, and other such events clearly sponsored by, or conducted for the benefit of commercial interests. However, this policy does not preclude participation of Navy recruiting personnel and their organic equipment, materials and exhibits so long as their participation is not used to stimulate sales or increase the flow of business traffic or to give that appearance. Requests for exceptions will be considered on a case-by-case basis by the Chief of Information.

(v) Questions as to appropriateness of Navy participation, or as to existing Navy and OASD (PA) policy, may be referred to the Chief of Information.

(w) Procedures for requesting participation are addressed in § 705.21.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6390, Feb. 1, 1979]

§ 705.18 Authority and coordination.

(a) Each naval command will coordinate its community relations program with the senior authority having responsibility for community relations in its area (District Commandant, Unified Commander, or other).

(b) Within policy limitations outlined in this section, the command receiving a request for Navy participation, and processing the required resources, has the authority to process the request and provide the support requested.

(c) Requests for support exceeding local capability, or requiring approval from higher authority, or requiring an exception to policy will be referred as directed in § 705.21 for determination.

(d) The Assistant Secretary of Defense (Public Affairs) has the overall responsibility for the Department of Defense community relations program. Civilian sponsors should be advised to address requests for approval of the following types of programs directly to the Director of Community Relations, Office of the Assistant Secretary of Defense (Public Affairs), Pentagon, Washington, D.C. 20301:

(1) National and international events, including conventions, except those taking place in overseas areas which are primarily of internal concern to Unified Commanders.

(2) Events outside the United States which have an interest and impact extending beyond the Unified Command

areas, or which require assistance from outside the command area.

(3) Public events in the Washington, D.C. area.

(4) Aerial, parachute, or simulated tactical demonstrations held in the public domain, except those held in areas assigned to overseas Unified Commands.

(5) Aerial reviews on military installations within the United States if the review involves more than one Service.

(6) Programmed national sports, professional athletic events, formal international competitions, and contests between a Navy and professional team in the public domain. See section 0605, par. 18 of the Navy Public Affairs Regulations.

(7) Performing Navy units appearing on regional or national television.

(8) Overall planning for Armed Forces Day (not including local activities).

(9) Granting exceptions to policy.

(e) Overseas, Unified Commanders are designated to act for and on behalf of the Secretary of Defense in implementing community relations programs within their command areas and in granting any exceptions to policy or regulations. This authority may be delegated.

(1) Policy, direction and guidance for Unified Command community relations programs are provided to Navy components of these commands by the Unified Commander concerned.

(2) Authority of the Commander-in-Chief, Pacific extends to planning and execution of community relations programs in Alaska and Hawaii. Participation in events held in Alaska and Hawaii will be governed by the same principles as policies applicable to other states.

(3) Community relations programs and events taking place within the United States which have an effect on a Unified or Specified Command as a whole, or are otherwise of significant concern to the Unified Command, require complete coordination through appropriate channels between the Unified Command and naval activities concerned.

(4) Unified Commanders overseas requiring Navy support for a community reltaions program or participation in a public event should coordinate their requirements with the appropriate Navy component command.

(f) The Secretary of the Navy will plan and execute Navy community relations programs and approve Navy participation in public events not otherwise reserved or assigned to the Secretary of Defense. This authority may be delegated.

§ 705.19 Financing.

(a) The financial requirements for community relations purposes will be kept to the minimum necessary to accomplish Department of Defense objectives.

(b) Costs of participation will normally be at government expense for the following types of events and programs when they are in the primary interest of the Department of Defense:

(1) Public observances of national holidays.

(2) Official ceremonies and functions.

(3) Speaking engagements.

(4) Programmed, scheduled tours by Navy information activity support units (e.g., an exhibit from the Navy Exhibit Center) when this method of reaching special audiences is considered by the Secretary of the Navy to be the most effective and economical way of accomplishing a priority public affairs program.

(5) Tours by units (e.g., the Navy Band) for which appropriated funds have been specifically provided.

(6) Support of recruiting.

(7) Events considered to be in the national interest, or in the professional, scientific, or technical interests of the Navy or Department of Defense, when approved by the Secretary of Defense or the overseas Unified Commander, as appropriate.

(c) Navy participation in all other public events will normally be at no additional costs to the government.

(1) Continuing type costs to the government which would have existed had the Navy not participated in the event will not be reimbursed by the sponsor.

(2) Transportation costs may be excluded from the costs to be borne by

the sponsor when the transportation can be accomplished by government aircraft on a normal training flight or opportune airlift.

§ 705.20 Use of Navy material and facilities.

(a) The loan of equipment and permission to use facilities will be dependent on the following:

(1) The program support must be within the command's public affairs responsibility.

(2) The loan of the equipment must not interfere with the military mission of the command.

(3) Equipment must be available within the command or obtainable from another Navy command in the local area.

(4) The event must be of the type for which participation is considered appropriate.

(5) It must not be in any direct or implied competition with a commercial source.

(6) There must be no potential danger to persons or private property that could result in a claim against the government. Safety requirements will be observed.

(b) Use of open mess facilities will be permitted only under one of the following conditions:

(1) Incident to the holding of a professional or technical seminar at the command.

(2) Incident to an official visit to the command by a civic group.

(3) Navy League Council luncheon or dinner meetings (not to exceed one per quarter per group).

(4) Incident to group visits by the Boy Scouts of America, Boys Clubs of America, the Navy League Sea Cadets (by virtue of their federal charters), Girl Scouts and the Navy League Shipmates, and a few representative adult leaders.

(c) Use of the official Navy flag will be in accordance with SECNAVINST 10520.2C and of official emblem in accordance with OPNAVINST 5030.11B.

(d) Requests not meeting the criteria cited here, but which are considered by the officer in command to have merit, may be referred to the Chief of Information.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.21 Requests for Navy participation.

(a) Decisions will be made on a case-by-case basis. Events which are inappropriate for one type of participation may be entirely appropriate for another type of participation. A positive and flexible approach should be employed.

(b) Requests by civilian organizations for Navy participation in programs or events they sponsor should be addressed to the nearest naval installation and should be evaluated and authorized at that level if possible. Request exceeding local resoures, or requiring authorization from higher authority, should be forwarded through appropriate channels.

(c) Requests for Armed Forces participation in public events are to be submitted on official request forms (§§ 705.33, 705.34 and 705.36) by the sponsors of events occurring outside a command's area of direct knowledge and local capability, or involving a type or level of participation unavailable locally, or requiring approval of higher authority.

(d) Fact sheets expounding upon normally requested assets are enclosed in §§ 705.33, 705.34 and 705.36 and may be reproduced and distributed locally.

(e) The official request form is to be used on all requests referred to the Chief of Information and to the Office of Assistant Secretary of Defense (Public Affairs).

§ 705.22 Relations with community groups.

(a) Naval commands will cooperate with and assist community groups within their capabilities, to the event authorized by current instructions, and will participate in their activitis to the extent feasible.

(b) Navy commands will encourage membership of personnel in community organizations.

(c) Officers in command will withhold approval of requests from community groups, organizations or individuals whose purposes are unclear, pending advice from the Chief of Information.

(d) Commands may make facilities, less housing and messing, available to community groups, at no expense to the government, when it is in the best interest of the Navy to do so. Mess facilities may not be used for meetings of civic groups or other asociations unless all the members of the group concerned are authorized participants of the mess as prescribed in NAVPERS 15951, except as provided below:

(1) Requests to make open mess facilities available to professional or technical seminars or civic groups meeting in connection with an official visit to the activity may be submitted to the officer in charge of the mess, or other appropriate authority. Such requests may be approved when it is shown that the inspection of the activity or the holding of a professional seminar is of principal importance and the use of mess facilities is incidental thereto.

(2) Because of the exceptional nature of the Navy League, as recognized by the Secretary of the Navy, open mess facilities may be used for luncheon or dinner meetings of Navy League Councils, but not more often than once per quarter per group.

(e) Relations with Industry and Labor in the Community (refer to SECNAVINST 5370.2F and DOD Directive 5500.7):

(1) Relations with Navy contractors and with industry and business in general are the responsibility of the officer in command, with the assistance of his public affairs officer.

(2) Navy commands will cooperate with industry and its representatives in planning and executing community relations projects of mutual interest.

(i) Visits to commands will be scheduled for industrial and employee groups under the same conditions as for other civilian groups.

(ii) A contractor may be identified in a news release, exhibit, or the like whenever the major responsibility for the product can be clearly and fairly credited to him. In such cases, both the manufacturer's name for the product and the Navy designation of it will be used.

(iii) Commands will not solicit, nor authorize others to solicit, contractors to provide advertising, contributions, donations, subscriptions, etc. Where there is a legitimate need for industrial promotion items, such as scale models, the command will contact the Chief of Information for advice as to the procedure for requesting procurement.

(iv) Similarly, if Defense contractors wish to distribute information material through official Navy channels, the Office of Information will be queried as to the desirability and feasibility of undertaking the desired distribution.

(v) Visits to contractor facilities are governed by the provisions of DOD Manual 5520.22-M (Industrial Security Manual for Safeguarding Classified Information). If nationally known press representatives will be involved, prior approval must be obtained both from the contractor (via the Chief of Information) and from the Assistant Secretary of Defense (Public Affairs).

(3) Commands will maintain the same relationship with labor unions as with other community groups and will not take action in connection with labor disputes. Personnel inadvertently or incidentally involved in labor disputes will consult officers in command for guidance.

(f) Emergency Assistance to the Community:

(1) Navy commands will offer and provide assistance to adjacent communities in the event of disaster or other emergency.

(2) The Chief of Information will be advised immediately of action when taken, and copies of subsequent reports to the Chief of Naval Operations will be forwarded to the Chief of Information.

(3) Navy commands will participate in planning by local Civil Defense officials.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.23 Guest cruises.

(a) *General policy.* (1) The embarkation of civilian guests in Navy ships is appropriate in the furtherance of continuing public awareness of the Navy and its mission.

(i) Examples of embarkations for public affairs purposes are (but not limited to): Individuals, community service clubs, civic groups, the Navy League, and trade and professional associations.

(ii) Embarkation of media representatives on assignment is discussed in § 705.14.

(iii) Other categories may be established by the Secretary of the Navy, subject to the approval of the Secretary of Defense.

(2) It has also been demonstrated that the occasional embarkation on cruises of families and personal guests of naval personnel has contributed materially to the morale of the family circle and has instilled in each individual a sense of pride in his ship. For further information see OPNAVINST 5720.2G.

(3) Embarkations should be conducted within the framework of regularly scheduled operations; underway periods solely to accommodate guests are not authorized.

(4) Commander-in-Chief, Pacific Fleet, Commander-in-Chief, Atlantic Fleet, Commander-in-Chief, U.S. Naval Forces Europe, Commander Military Sealift Command (and their subordinate commands if so designated), Chief of Naval Education and Training, and District Commandants may authorize the embarkation of female civilians for daylight cruises. Embarkation of civilians for overnight cruises must be authorized by the Chief of Naval Operations via the Chief of Information.

(5) All guest visits are normally authorized on an unclassified basis.

(6) In all instances, due precautions must be taken for the safety of the guests. (See section 0403, pars. 6(b) and, 6(e), of the Navy Public Affairs Regulations, for procedures to be followed in the case of death of, or injury to, civilians embarked on naval ships.)

(7) For further information on policy, procedures, and eligibility criteria, see OPNAVINST 5720.2G.

(b) *Authority.* (1) Authority to establish procedures for the conduct of the embarkation of guests for public affairs purposes (including the Secretary of the Navy Guest Cruise and Guest of the Navy Cruise programs, which are discussed in § 705.24) is vested in the Secretary of the Navy. This authority is limited only insofar as the Chairman of the Joint Chiefs of Staff and the commanders of the Unified and Specified Commands (and their component commanders, if so designated) have the authority to use Navy ships to embark individuals other than news media representatives for public affairs purposes.

(i) Public affairs embarkations originating within the geographical limits of the Unified Command will be approved by and coordinated with the commanders of such commands. This authority may be delegated. Requests for such embarkations originating with the subordinate fleet or force command of a Unified Command will be submitted via the operational chain of command, to the appropriate commander of the Unified Command, unless delegated.

(ii) Requests for public affairs embarkations originating from any Navy source other than the Chairman of the Joint Chiefs of Staff, or the Unified and Specified Commanders or their subordinate commands, will be submitted to the Chief of Information, who will effect coordination with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs) as appropriate.

(iii) When guests debark in a foreign port which is in the geographic area of a Unified Command other than that in which the cruise originated, the Chief of Information will coordinate travel by obtaining concurrence of all appropriate commanders and the approval of the Chief of Naval Operations, and the Assistant Secretary of Defense (Public Affairs) as appropriate.

(2) Officers in command to whom authority to embark guests for public affairs purposes is delegated will make maximum use of this authority.

(c) *Secretary of the Navy Guest Cruise and Guest of the Navy Cruise Programs.* (1) The objective of these two programs is: To expose top-level and middle-level opinion leaders in the fields of business, industry, science, education, and labor to the operation of the U.S. Navy, in order that they may gain a better understanding of its capabilities and problems, the complicated nature of modern sea-based equipment, and the high levels of responsibility and training required of Navy men and women.

(2) In addition to policy contained in paragraph (c)(1) of this section, the following policy guidelines apply to the conduct of the Secretary of the Navy Guest Cruise and the Guest of the Navy Cruise Programs.

(i) *Secretary of the Navy Guest Cruise Program.* (A) Only aircraft carriers and cruisers will be used.

(B) Cruises will be conducted once each quarter on each coast, contingent upon the availability of appropriate ships.

(C) The optimum number of guests is 15.

(D) Guests will be drawn from top-level executives and leaders who have not had previous exposure to the Navy. "Previous exposure" is defined as active or reserve service in the U.S. Navy or U.S. Marine Corps within the last 10 years; membership in the Navy League or any other Navy-oriented organization; or participation in a cruise on a U.S. Navy ship in the last 10 years.

(E) Whenever feasible, Secretary of the Navy Guests will be greeted by CINCLANTFLT or CINCPACFLT, or in their absence by the SOPA. Comprehensive unclassified briefings will be given dealing with the Navy's mission, fleet operations, and current problems.

(F) Cruises will vary in length from 3 to 7 days, when appropriate, to conform with the operating schedule of the ship.

(ii) *Guests of the Navy Cruise Program.* (A) All types of ships will be used. This will include carriers when available, after selection of a cruise for the Secretary of the Navy Guest Cruise Program.

(B) Guest of the Navy Cruise guests will be drawn from middle-level executives and leaders who have not had previous exposure to the Navy. Guests should include persons who have direct impact on recruiting, such as secondary school principals, guidance counselors, coaches and teachers.

(C) Cruises of relatively short duration (3 to 5 days) are preferred, although cruises up to 7 days are authorized. Protracted cruises will not be approved except for special circumstances.

(D) Invitations will be extended by the District of Commandants. Invitations will include:

(*1*) Statement of the purpose of the Guest of the Navy Cruise Program.

(*2*) Authorization for embarkation and, if applicable, for COD flights, with instructions for reporting on board.

(*3*) Name and rank of the commanding officer and, if applicable, name and rank of embarked flag officer.

(*4*) A caution that guests should not accept the invitation unless they are in good health.

(*5*) Statement to the effect that the tempo of operations might cause changes in scheduling which could result in the invitation having to be withdrawn.

(E) The following necessary information may be included separately with a letter of invitation: Recommended wardrobe, passport and immunization requirements, availability of emergency medical and dental facilities, ship's store and laundry facilities, statement that guest's use of a camera will be authorized subject to certain restrictions, and a listing of those restrictions. In addition, the following statement will be included with each invitation, or form part of the attached information sheets:

> The Department of the Navy has no specific authority to use its funds to defray or reimburse any personal expenses of a navy guest. As a result, the Department of the Navy cannot provide you with transportation to the port of embarkation or from the port of debarkation back to your home. Your expenses for meals will be quite nominal while you are on board a naval ship or facility. You should make provision for any extraordinary expense which may arise. For example, if a personal or other emergency arises which necessitates your returning home during the cruise, you should be prepared to take commercial transportation at your own expense from the most distant point on the cruise itinerary.
>
> Navy ships and aircraft, by their very nature, present certain hazards not normally encountered on shore. These hazards require persons on board to exercise a high degree of care for their own safety.
>
> Acceptance of this invitation will be considered your understanding of the above arrangements and limitations.

(iii) *Applicable to both Programs.* (A) Guests will provide their own transportation from home to the ship and return, and must reimburse the Navy for living and incidental expenses while embarked so that the program may be conducted at no additional expense to the government.

(B) Because the number of billets available to accommodate all of the potential guests is limited, the guest's opportunity to communicate his experience to his associates must be considered. For this reason, one of the criteria for selection of guests will be their level of activity in civic, professional, and social organizations. In nominating and selecting guests, effort will be made to ensure that minority citizens are included as appropriate.

(C) Atlantic cruises will be made on ships operating between East Coast ports, or between CONUS and the U.S. Caribbean ports of San Juan, PR, or Charlotte Amalie (St. Thomas), Virgin Islands. Pacific cruises will be made on ships operating between West Coast ports: Between CONUS and ports in Hawaii, Alaska, Mexico or Canada; or between ports within Hawaii or Alaska.

(D) Guests will be informed of security restrictions. Unclassified photography should be permitted on board, as pictures renew guests' feelings of identification with a ship. Guests will be advised of areas, however, where photography is prohibited, and security regulations will be courteously but firmly enforced.

(E) Guests will be billeted in officers quarters and normally subsisted in the wardroom. It is not necessary that guests be assigned individual rooms. Billeting with ship's officers promotes mutual understanding, and guests feel more closely identified with the ship's company. They will be invited to dine at least once in each mess on board, if the length of the cruise permits. Guests will be encouraged to speak freely and mingle with the crew.

(F) Guests will be accorded privileges of the cigar mess commissioned officers mess (open) ashore—with the exception of package store privileges—and the use of ship's or Navy Exchange laundry and tailor shops. Other Navy Exchange privileges will be limited to purchase of items for immediate personal use.

(G) Only emergency medical and dental care will be provided and then only where civilian care is not conveniently available.

(*1*) In the event of injury to civilians embarked in Navy ships and aircraft or visiting naval activities, commanding officers will notify the Chief of Information, the appropriate Commandant, and operational commanders, by message, of the injury and action taken.

(*2*) In the event of an emergency not covered by Navy Regulations, the facts and circumstances will be reported immediately to the Secretary of the Navy.

(H) Guests may be allotted time for side trips at their own expense when an itinerary includes naval activities or ports adjacent to recognized points of interest.

(I) As a souvenir of the cruise, it is suggested that guests be provided with a photograph of the ship, perhaps suitably inscribed by the commanding officer prior to debarkation.

(J) Any publicity will be limited to that initiated by the participants. Navy-sponsored publicity will be avoided unless sought by the participants. At the same time, media inquiries or inquiries from the general public will be answered fully, the purposes of the cruise program outlined and the fact stressed that no cost to the government is incurred.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.24 Exhibits.

(a) Navy exhibits are representations or collections of naval equipment, models, devices and information and orientation material placed on public display for information purposes before audiences at conventions, conferences, seminars, demonstrations, exhibits, fairs, or similar events. Also included are general purpose displays in public buildings or public locations. Museums also occasionally request a Navy exhibit on a permanent or temporary loan basis.

(1) Exhibits may be displayed in any appropriate location or event (includ-

ing commercially owned spaces such as shopping centers, malls, etc.) provided it is clearly established that such areas are places the general public frequents and that the exhibit is not for the purpose of drawing the public to that location, and that it is determined that participation is in the best interests of the Department of Defense and the Department of the Navy.

(b) Exhibits will be used for the following purposes only:

(1) To inform the public of the Navy's mission and operations.

(2) To disseminate technical and scientific information.

(3) To assist recruiting of personnel for Navy military service and for civilian employment in the Department of the Navy.

(c) Exhibit requests and procedures:

(1) Requests for Navy exhibits, other than local exhibits may be forwarded to the Navy Recruiting Exhibit Center via the local Navy recruiter with an information copy to the Chief of Information. The primary mission of the Navy Recruiting Exhibit Center is to support local Navy recruiters. Requests for exhibits for community relations events will be considered favorably only when not in conflict with recruiting requirements.

(i) Requests for exhibits must be submitted well in advance of their proposed dates of use.

(ii) Requests for mobile exhibits requiring tractor-trailer transportation should be forwarded prior to November 15th previous to the year desired. A tour itinerary of mobile exhibits will then be established for the following year.

(iii) The period of time for which an exhibit is authorized will be determined by the nature of the event and the type of exhibit (e.g., equipment from local resources used for a local celebration would normally not be exhibited for more than three days; but, a formal exhibit at an exposition might remain for the duration of the event).

(2) The office of the Assistant Secretary of Defense (Public Affairs) is the approving authority for Navy exhibits in events of international or national scope, or those requiring major coordination among the Armed Forces, or with other agencies of the Federal Government.

(i) All Navy activities will forward such requests to the Chief of Information for coordination with the OASD (PA).

(ii) Subordinate commands of a Unified Command will forward exhibit requests of the above types to the Unified Commander concerned, via the chain of command.

(3) The official OASD(PA) Request Form for Armed Forces Participation will be used. See Armed Forces Request Form, § 705.36.

(4) Requests for exceptions to policy for exhibit displays should be forwarded to the Officer in Charge, Navy Recruiting Exhibit Center.

(5) Policy guidance on costs is defined in § 705.19.

(6) Occasionally, a project officer will be assigned to coordinate use of the exhibit with the sponsor.

(i) Project officers are normally commissioned officers, equivalent civilian personnel, local recruiters or reservists, who have been assigned the responsibility of coordinating Service participation in a special event.

(ii) The project officer should establish immediate liaison with the sponsor.

(iii) The project officer should assist in determining the actual location of the exhibit, make arrangements for assembling and disassembling the exhibit material, and supervise these operations.

(iv) The project officer will ensure Navy and Department of Defense policies are followed, and will coordinate local news releases concerning Navy participation.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.25 Navy Exhibit Center.

(a) The center is a field activity of the Chief of Information and is located in the Washington Navy Yard. Its primary mission is to produce, transport and display U.S. Navy exhibits throughout the United States. It also facilitates assignments of Navy combat artists and, additionally, produces exhibits for its own tours and for short-term loans to naval commands.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.26 Exhibit availability report.

(a) A center index of exhibits which are available at the local level in each Naval District is maintained by the exhibit center. To achieve maximum effectiveness for an overall integrated program, an up-to-date registry of all exhibits is required.

(b) A current inventory of exhibits headquartered in Washington, DC, and managed by the Navy Recruiting Exhibit Center for scheduling purposes may be obtained by writing to: Officer-in-Charge, Navy Recruiting Exhibit Center, Washington Navy Yard, Washington, DC 20374.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§§ 705.27—705.28 [Reserved]

§ 705.29 Navy Art Collection.

(a) The U.S. Navy has continued to record its military actions, explorations, launchings, etc., in fine art form since before World War II. The present Navy Combat Art Collection contains over 4,000 paintings and sketches. A significant number of new works is being added each year. The combat artists of World War II have been replaced by civilian artists who witness today's Navy in action, record their impressions, and donate their works of art to the Department of the Navy.

(1) The voluntary services of most of the artists are arranged through the Navy Art Cooperation and Liaison Committee (NACAL) which operates in close cooperation with the Salmagundi Club of New York City and the Municipal Art Department of the City of Los Angeles.

(2) The Chief of Information has established liaison with the Salmagundi Club in order to maintain a continuing historical record of the Navy. Organized in 1871, the Salmagundi Club is the oldest club of professional artists in the United States. The Club appointed a Navy Art Cooperation and Liaison (NACAL) Committee to advise the Navy on art matters and to nominate artists for assignment to paint Navy activities through the world. The Chief of Information reviews the nominations, and issues SECNAV invitational travel orders to each artist approved.

(3) The following policy pertains:

(i) All finished art portraying the Navy and produced by Navy artists on active duty for that purpose and by guest artists working under invitational travel orders becomes the property of the Department of the Navy.

(ii) Civilian artists selected to paint Navy life through cooperation of a private sponsor and the Chief of Information may be authorized by the Chief of Information or the Office of the Secretary of Defense to retain their works.

(iii) Paintings, sketches, drawings and other forms of artwork will not be accepted by the Department of the Navy unless all reproduction rights are surrendered and unless they become the permanent property of the Department of the Navy.

(iv) Requests for reproduction of combat art for use in advertising or publication will be directed to the Chief of Information.

(b) Responsibilities:

(1) The Chief of Information exercises supervision and control of the Navy Art Program and issues SECNAV invitational travel orders and letters of invitation to artists selected for assignment.

(2) When directed by the Chief of Information or other appropriate Navy authority, a NACAL project officer will perform the following functions:

(i) Act as a local liaison officer for the NACAL Program.

(ii) Assist NACAL artists on assignments within his area.

(3) The Curator Navy Combat Art Center, in coordination with the Chief of Information, will:

(i) Plan trips for the NACAL Program.

(ii) Approve requests for art displays.

(iii) Provide logistic support for the maintenance, storage, shipment and display of the Navy Combat Art Program.

(c) Requests for art displays should be forwarded to the Director, Community Relations Division, Office of Information, Navy Department, Washington, DC 20350.

(d) Exhibition of Navy Art:

(1) Operation Palette I" is a carefully selected group of 75 to 100 combat art paintings depicting Navy and Marine Corps activities during World War II. The schedule of "Operation Palette I" is promulgated by the Officer-in-Charge, Navy Recruiting Exhibit Center and supervised by the Chief of Information, with the concurrence of District Commandants. Schedules are arranged so that the exhibition travels within a particular Naval District for several months at a time. District Commandants designate project officers for each city where "Operation Palette I" is exhibited. The project officer makes all arrangements, including suitable location, publicity and personnel to assist the chief petty officer who travels with the collection. Promotional kits are provided by the Officer-in-Charge, Navy Recruiting Exhibit Center. Requests for exhibitions are not desired, since the collection always travels on a prearranged tour.

(2) "Operation Palette II" consists of 75 to 100 paintings representative of the worldwide operations of the contemporary Navy and Marine Corps * * * the Navy today * * *, and travels on prearranged tours similar to "Operation Palette I."

(3) Other exhibitions of original paintings from the Combat Art Collection may be scheduled on request by either Navy commands or civilian art groups. Requests should be directed to the Director, Community Relations Division, Office of Information, Navy Department, Washington, D.C. 20350 and contain the following:

(i) The occasion.

(ii) Inclusive dates. (Not less than 10 days or more than 90 days sub-custody.)

(iii) Expected attendance and type of publicity planned.

(iv) Amount of space allotted.

(v) If Navy-sponsored show, certification that 24-hour security will be provided for the paintings while in custody.

(vi) If civilian-sponsored show, statement that transportation and insurance requirements will be met. (Physical security must be available for exhibit, with an attendant on duty during open hours and locked building or other means of protecting exhibit when closed to the public.)

(e) Navy Combat Art Lithograph Program:

(1) This program makes available full color, high quality lithographs which are faithful reproductions of the original artwork on quality paper of selected works of art from the Navy Art Collection.

(2) Additional information and ordering details are contained in CHINFO NOTICE 5605, which is issued periodically.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.30 Aerospace Education Workshop.

(a) This program is devised by the Navy to give students at colleges and universities conducting teacher training a comprehensive background in the field of aviation. The teachers in turn integrate this knowledge into their education programs.

(b) Appropriate commands are encouraged to provide assistance to educational institutions sponsoring the workshop program: *Provided,* That such support does not interfere with the command's primary mission and that such cooperation involves no additional expense to the government.

(c) The Chief of Naval Operations has cognizance of all assistance provided by the Navy to all Aerospace Education Workshop program. A summary report of local command participation in Aerospace projects will be submitted to the Chief of Naval Operations via the appropriate chain of command. Information copies of such reports will be sent to Commander, Navy Recruiting Command and the Chief of Information. For further information see OPNAVINST 5726.1C.

§ 705.31 USS Arizona Memorial, Pearl Harbor.

(a) Limited space and the desirability of keeping the Memorial simple and dignified require the following practices to be observed:

(1) Rendering of formal ceremonies on the USS Arizona Memorial will be confined to Memorial Day.

(2) Observances on December 7, or any other date, at the request of individuals or organizations, will consist of simple wreath-laying, or other appropriate expressions conducted with dignity.

(3) Plaques intended for display on the Memorial may be presented by headquarters of national organizations only. Plaques from regional, state or local organizations cannot be accepted. Only one plaque will be accepted from any organization. The overall size of the plaques, including mounting, must be no larger than 12 inches square.

(b) The Commandant, Fourteenth Naval District, is designated to coordinate all formal or informal observances involving the Memorial.

§ 705.32 Aviation events and parachute demonstrations.

(a) Armed Forces aircraft and parachutists may be authorized to participate in appropriate in public events which meet basic Department of Defense criteria. This participation may be one of the officially designated military flight or parachute demonstration teams, flyover by aircraft, a general demonstration of capabilities by aircraft, or the static display of aircraft.

(b) Events which are appropriate for aviation participation include: Dedication of airports; aviation shows; aircraft exposition; air fairs; recruiting programs; civic events which contribute to the public knowledge of naval aviation equipment and capabilities and to the advancement of general aviation; public observances of certain national holidays (Armed Forces Day, Veterans Day, Memorial Day and Independence Day); national conventions of major veterans organizations; memorial services for deceased, nationally recognized dignitaries; and receptions for foreign dignitaries.

(c) Support of Armed Forces recruiting is the primary purpose of military flight and parachute demonstration teams. Armed Forces recruiting teams are available to assist sponsors in coordinating advance publicity and information coverage to insure maximum exposure for the demonstration team and the event. This assistence is at no additional expense to the sponsor; however, the sponsor is required to give full support to the recruiting effort and to cooperate fully with local service officials. Such support could include (but is not limited to) the provision of prime space for recruiters at the event site and the provision of courtesy passes in controlled quantities to recruiters for the purpose of bringing recruit prospects and recruiting advisors to view the show.

(d) DOD support of air show fund raising efforts in the form of provision of military flight and parachute demonstration teams is limited to charities recognized by the Federal Services Fund-Raising Program. These include such agencies as the United Givers Fund, Community Chests, National Health Agencies (as a group), International Service Agencies and the military aid societies. Armed Forces support to fund-raising events for a single cause, even though the charity is a member of a federated or joint campaign or donates in part to one or several of the campaigns, is inconsistent with the basic position of Department of Defense. The name of the nearest Combined Federal Campaign coordinator will be supplied to the sponsor, or if he chooses, he might elect to work with the local United Givers Fund (Community Chest). As a minimum, the sponsor must agree to provide at least half of the profit above costs to the Combined Federal or United Givers Campaigns to receive Armed Forces support.

(e) *Request form.* This form is used to request military flight and parachute demonstration team participation in public events. The information is required to evaluate the event for appropriateness and compliance with Department of Defense policies and for coordination with the units involved.

GENERAL

1. Title of Event ——————————
Town or City: ———— State: ————
Date: ———— Time—From: ————
To: ——— Place: (Airport, etc.) ————

2. Sponsor: ————————

3. The sponsor (is) (is not) a civic organization and the event (does) (does not) have the official backing of the mayor.

4. The sponsoring organization (does) (does not) exclude any person from its membership or practice any form of discrimination in its functins, based on race, creed, color or national origin.

5. Sponsor's representative authorized to complete arrangements for Armed Forces participation and responsible for reimbursing Department of Defense for accrued expenses when required:

Name: ————————
Address: ————————
City, State: ———— Zip: ————
Telephone: (Office) ———— (AC) ————

————————

(home) ———— (AC)

————————

6. Purpose of this event (explain fully): —

————————

7. Expected attendance: ————

8. Is this event being used to promote funds for any purpose? ————

9. Admission charge: ————

"Charge for seating: ———— —

10. Disposition of profits which may accrue: ————

11. Will admission, seating and all other accommodations and facilities connected with the event be available to all persons without regard to race, creed, color or national origin? ————

12. Will the standard Military Services allowance for quarters and meals be provided by the sponsor for Armed Forces participants? ————

13. Will transportation at sponsor's expense be proviced for Armed Forces participants between the site of this event and hotel? ————

14. Will telephone facilities, at sponsor's expense, be made available for necessary official communications regarding the event?

————————

15. It may be necessary for representatives of the requested unit to visit the site prior to the event. Will transportation, meals and hotel accommodations be provided by the sponsor? ————

————————

16. Please describe the space which will be provided to recruiters: ————

————————

————————

————————

17. Designate charity beneficiary(s): ————

————————

FLIGHT TEAM, PARACHUTE TEAM, FLYOVERS, STATICS

1. This request is for (check appropriate line):

Flight Team Demonstration ....
U.S. Navy Blue Angels ....
U.S. Air Force Thunderbirds. (Cost for either team is $1500.00 for each day team scheduled at your event.) ....
Aircraft Flyover: (No cost to sponsor.) ....
Static Aircraft: (Cost is $25.00 per day per crewmember.) ....
U.S. Army Silver Eagles: (Cost for this team is $750.00 for each day team scheduled at your event.) ....
Parachute Team Demonstration U.S. Army Golden Knights: (Cost is $25.00 per day per man for each day required to support your event. Team consists of 10–14 personnel.) ....
(Other) ....

2. Flight and/or Parachute Team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. Please give the specific location of your event ————————

————————

If an airport, name of airdrome facility and longest usable landing runway. Airport:

————————

Runway data: ———————— feet.

3. Flyovers, Flight and Parachute Team demonstrations require that sponsors secure FAA clearance or waiver. Will steps be taken by sponsor to accomplish this at least sixty days prior to the event? ————

4. Flight and Parachute Team demonstrations must adhere to FAA regulations which specify that spectators not be permitted within 1500 feet of an area over which the flight demonstration takes place, or 250 feet of the jump area over which parachutists are performing. What type of crowd control is planned? ————

————————

5. Flight and Parachute Team demonstrations require that an ambulance and a doctor be on the site during the demonstration. Will this requirement be met? ————

6. Flight and Parachute Team demonstrations require that the sponsor provide a recent aerial photograph, taken vertically from an altitude of 5,000 feet or higher, to the team(s) giving the demonstration. Will this requirement be met? ————

7. Flight Team demonstrations and Static Aircraft displays require that the sponsor provide suitable aircraft fuel (JP jet fuel or aviation gas, as appropriate) and pay the cost of transporting and handling this fuel, if it is not available at the staging airport under military contract prices. Will this requirement be met? ————

8. Flight Team demonstrations and Static Aircraft displays require mobile firefighting, crash and ground-to-air communications equipment at the demonstration site. Will this requirement be met? ————

9. Flight Teams and Static Aircraft displays require that the sponsor provide guards for the aircraft that land and are parked at the site during their entire stay. Will this requirement be met? ————

10. Parachute Team demonstrations may require that the sponsor arrange aircraft transportation from the team's home base to the location of the event, for use as a jump platform and return to the home base. Will this requirement be met, if necessary?

————————————

11. Name and address of any Armed Forces representative or government official with whom you have discussed possible participation: ————————————

————————————

CERTIFICATION

I certify that the information provided above is complete and correct to the best of my knowledge and belief. I understand that representatives of the Military Services will contact me to discuss arrangements and costs involved prior to final commitments.

Signature: ————————————
(Sponsor's Representative)

Date of Request: ————————————
Return this form to: ————————————

(f) *Definitions.* A flight team demonstration is an exhibition of precision aerial maneuvers flown by the official Department of Defense military flight demonstration teams, the U.S. Air Force Thunderbirds, the U.S. Navy Blue Angels and the U.S. Army Silver Eagles. An aircraft demonstration is a flight demonstration by aircraft other than those of the teams listed above and designed to portray tactical capabilities of aircraft by a single aircraft (i.e., the U.S. Marine Corps "Harrier") or group of aircraft, including air-to-air refueling, helicopter hover and pick-up or rappelling capabilities, Low Altitude Parachute Extraction System, maximum performance take-off, etc. A parachute demonstration is an exhibition of free-fall and precision landing techniques by the official DOD parachute team, the U.S. Army Golden Knights. Other parachute demonstrations can be performed by the U.S. Navy Parachute Team, or another unofficial team or sports parachute club representing the Department of Defense. A flyover is a flight of not more than four aircraft over a fixed point at a specific time and does not involve precision maneuvers or demonstrations. Flyovers are authorized for certain events when the presence of Armed Forces aircraft overhead would contribute to the effectiveness of the event based on a direct correlation between the event and the aircraft. Flyovers can also be authorized for occasions primarily designed to encourage the advancement of aviation and which are of more than local interest. Flyovers by any of the official DOD flight teams are not authorized. Parades are not considered an appropriate event for authorizing flyover support. The static display of aircraft is the ground display of any military aircraft and its related equipment, not involving flight, taxiing or starting of engines.

(g) Events which are appropriate for Armed Forces aviation participation in the public domain include such activities as dedication of airports and facilities, aviation shows, expositions, and fairs; and other civic events which contribute to the public knowledge of the U.S. Military Services aviation equipment and capabilities. The number one priority for utilization of military aircraft and parachutists in such events in the public domain is to support the recruiting aspects of the all-volunteer force concept. The approval of any such military demonstration will only be authorized if a maximum recruiting benefit exists at each location.

(h) *Costs.* (1) The cost for either the United States Air Force Thunderbirds or the United States Navy Blue Angels will be $1500 for each day a demonstration is scheduled. If the United States Army Golden Knights precision parachute team is scheduled for your event, the cost will be $25 per man per day for each day required to support your event, to include the days of travel if required. Under normal conditions, this group is comprised of fourteen members: Nine jumpers, three aircraft crewmen, one ground controller, and a narrator. The sponsor will be advised by the Golden Knights in advance of the costs related to his event for which the government must be reimbursed. The United States Army Silver Eagles helicopter team, composed of seven helicopters, performs precision formation manuevers and solo helicopter aerobatics to demonstrate the capabilities of modern helicopters and the skill of Army aviators. The Silver Eagles performance lasts about 30 minutes and is conducted entirely in full view of spectators on the crowd line. The cost for the team is $750 for each day a demonstration is scheduled. The sponsor should make a check payable to the Treasurer of the United States for the required amount and present it to the appropriate demonstration team commander in advance of the scheduled event.

(2) Costs associated with static aircraft are normally $25 per day for each crew member plus possible fuel requirements discussed below. Charges for any other military parachuting demonstration (i.e., U.S. Navy Parachute Team, local Armed Forces sport parachute clubs, etc.) will depend on the number of personnel and transportation involved. Checks payable to the Treasurer of the United States should be made available to the appropriate aircraft commander for static displays or parachute team commander upon arrival at the event.

(i) As noted in the Department of Defense request form, the sponsor is required to pay per diem costs for team and static display crew members except for flyovers or aircraft demonstrations not involving landing.

(3) These costs are binding after a team or crew personnel have arrived at the show site, even though weather conditions or other unforeseen circumstances force the event to be cancelled. These funds provided by the sponsor will be utilized by team members or crew personnel for paying housing and subsistence costs. The actual breakdown of the per diem involved is $13.20 for housing, $9.30 for subsistence, and $2.50 for incidental expenses. In those locations where housing and subsistence cannot be procured for these amounts, it will be the responsibility of the sponsor to absorb the additional cost. As stated, these costs will cover participation but does not include certain ground support requirements (i.e., ground transportation, telephone, etc.) to be furnished by a sponsor as outlined in a team support packet.

(4) Other costs that could be incurred by the sponsor are in the area of the sponsor's agreement to provide suitable aircraft fuel (defined as JP jet fuel or aviation gas and lubricants) at U.S. Government contract prices. Where fuel is available from local military stocks—usually military installations—or when fuel is available from commercial into-plane contract locations, the U.S. Government will pay all fuel costs. If military contract fuel is not available at the show site, the sponsor will be required to pay all costs above the contract price and that price charged by the local supplier. However, the sponsor may choose to transport military contract fuel from a military base or a commercial airport having a U.S. Government into-plane contract. In this case, his cost would be only the transporting and handling of this fuel to the show site.

(5) The Department of Defense no longer requires the sponsor to provide the Department with a public liability and property damage insurance policy. This should in no way deter the sponsor from obtaining such liability and property damage insurance he feels is necessary for his own protection. Due to the costs that could accrue to the sponsor in case of cancellations because of inclement weather, the sponsor may wish to consider rain insurance to protect his investment. Previous sponsors have advised us that such insurance is available from most commercial companies.

(l) *Other information.* (1) Flight and/or parachute team demonstrations are restricted to appropriate events at airports, over open bodies of water, or over suitable open areas of land. For the U.S. Air Force Thunderbirds or U.S. Navy Blue Angels to operate from an airport show site, the following operational requirements must be met:

(i) Minimum useable runway length for the Thunderbirds is 5000 feet by 150 feet in width.

(ii) Minimum useable runway length for the Blue Angels is 6000 feet by 150 feet in width.

(iii) Minimum single landing gear load bearing capacity for Thunderbirds is 45,000 pounds; for Blue Angels, 21,000 pounds. Tandem landing gear load bearing capacity is 155,000 pounds for Blue Angels and Thunderbirds.

(2) A staged performance may not be given if the location planned for the show site does not meet these minimums. The maximum distance for a staged performance" under normal conditions is 50 nautical miles. It should be noted that staged performances are seldom authorized since the recruiting potential is reduced at such events.

(3) The type and number of static and/or flyover aircraft which may be assigned is entirely dependent upon the Military Services' capability to provide such resources at the time of your event. This capability is affected by operational commitments and sponsors are advised that confirmation of static/flyover aircraft cannot be made by the appropriate Service more than 15-30 days before your event.

(4) The U.S. Army Silver Eagles are normally restricted to performances at airports. Other open land areas may be operationally suitable but require the prior approval of the team commander in each case.

(5) Only one flight demonstration team and a parachute demonstration team may be authorized for any one event. Military aircraft demonstrations may not be authorized for events on the days a flight team is participating. A flyover is not authorized when a flight team is participating unless it can be provided by a locally-based National Guard or Reserve component.

(6) Participation by the U.S. Navy Blue Angels and the U.S. Air Force Thunderbirds is normally limited to two consecutive years in any one event. This usually involves one appearance by each of the two flight teams. This provision may be waived when other appropriate requests have not been received, when the team is performing in the same geographical area and has open dates or when the event is national or international in nature and participation would be in the best interests of Department of Defense. Participation in an event is normally limited to two days unless a third day can be included without preempting other requests.

(7) Sponsors are required to obtain a Federal Aviation Agency (FAA) waiver for any demonstration by military aircraft and/or parachutists in the public domain. The final authorization for such Armed Forces participation hinges upon the sponsor securing this waiver far enough in advance to permit adequate planning (normally not later than 60 days prior to the event). Further guidance on the details of obtaining this waiver will be contained in the team support packet or FAA. FAA regulations require that spectators be confined 1500 feet from a flight or aircraft demonstration and 250 feet from a parachute demonstration.

(i) In some cases, parachute demonstrations require that the sponsor arrange for appropriate transportation for the team and equipment from its home station to the event and return.

(ii) Mass parachute jumps, drops of equipment, assault aircraft demonstrations, or tactical helicopter troop landings under simulated tactical conditions, will be limited to military installations. These activities, except those scheduled as part of regular training programs, are not authorized for public events in the civil domain.

(8) When civilian air racing is involved in an event where Armed Forces participation has also been scheduled, prize monies must come from sources other than admission charges.

(9) Flight team, parachute and aircraft demonstrations also require that the sponsor provide: (i) Recent aerial photograph of the site; (ii) an ambulance and doctor at the site; and (iii) Guards for the Armed Forces aircraft during their entire stay. The aerial photograph should be recent, taken vertically from at least 5,000 feet.

(10) Maximum advantage of Armed Forces recruiting will be taken at appropriate events in the public domain where demonstrations by military aircraft and parachutists have been authorized.

(11) Exception to the policies contained herein will only be considered by OASD(PA) on events of national or international significance.

(12) Department of Defense hosts a scheduling conference in mid-Decem-

ber each year to prepare U.S. Air Force Thunderbirds, U.S. Navy Blue Angels, U.S. Army Golden Knights and U.S. Army Silver Eagles participation schedules for the ensuing year. All requests for such demonstrations from sponsors should reach OASD(PA) prior to the middle of November each year to be considered at this conference. In order to accommodate many requests Department of Defense receives for other parachuting demonstrations, aircraft demonstrations, static aircraft displays, and flyovers, each request must be received by OASD(PA) a minimum of 30 days in advance of the event and preferably 60 days in advance.

(13) If there are any points that a member of the public might wish to have clarified, contact Chief, Aerial Events Branch, OASD(PA), Room 1E790, The Pentagon, Washington, DC 20301. Telephone: AC (202) 695-6795 or 695-9900.

§ 705.33 Participation by Armed Forces bands, choral groups, and troops in the public domain.

(a) Military musical participation in public events which otherwise meet the criteria outlined herein will be limited to patriotic programs as opposed to pure entertainment and will not duplicate a performance within the capability of a civilian group. For example, music to accompany the presentation of the national colors, or a performance of military or patriotic music by a military band, drum and bugle corps or choral group may be authorized; background, dinner, dance or other social music is considered "entertainment."

(b) Requests received for military musical participation in appropriate events in the civilian domain must include an indication from the sponsor that there is no conflict with the local civilian musicians concerning the appearance of Navy musicians. A statement to this effect from the cognizant local musicians' union must be obtained by the sponsor and attached to his request.

(c) Armed Forces musical units may be authorized to provide certain specified musical programs in the public domain. The performance must not place military musicians in competition with professional civilian musicians. Background, dinner, dance or other social music cannot be authorized. The specified programs which may be authorized usually include a short opening or closing patriotic presentation. Musical selections normally consist of a medley of military or patriotic songs, honors to the President or Vice President (if he is there), or music to accompany the presentation of colors by a Color Detail.

(1) Armed Forces musical units may be authorized to participate in official government, military and civic functions.

(i) Official government functions include those in which senior officials of the Federal government are involved in the performance of their official duties.

(ii) Official military functions include social activities held on military installations (or off when the Military Service certifies that suitable facilities are not available on post) which are sponsored by the Military Services, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(iii) Official civic functions include such State, county or municipal events as inaugurals, dedication of public buildings and projects, the convening of legislative bodies, and ceremonies for officially invited government visitors.

(2) Armed Forces musical units may also be authorized to provide patriotic and military programs at national conventions and meetings of nationally-recognized civic, patriotic and veterans organizations.

(d) Bands, drill teams and other units can normally participate at no cost to the sponsor if the event is within the installation's immediate community relations area (approximately 100-mile radius).

(1) Normally, not more than one band or other musical unit will be authorized for a parade in the civilian domain. This guidance intended to assure widest possible participation in public events of local interest (particularly on national holidays) does not apply to national convention of veter-

ans' groups or other events having national significance.

(2) All Armed Forces participation in international and national events, and in the Washington, DC area, must be authorized by the Assistant Secretary of Defense (Public Affairs).

(3) Requests for Armed Forces musical or troop units when no military installation is accessible, or for the Washington, DC-based ceremonial bands or troop units (when the event is outside the Washington, DC area), should be addressed to the parent Service of the unit:

(I) U.S. ARMY

Chief of Public Information, Department of the Army, Washington, DC 20310.

(II) U.S. NAVY

Chief of Information, Code OI-321, Department of the Navy, Washington, DC 20350.

(III) U.S. AIR FORCE

Director of Information, Secretary of the Air Force, Community Relations Division, Washington, DC 20330.

(IV) U.S. MARINE CORPS

Commandant of the Marine Corps, Code AG, Headquarters, U.S. Marine Corps, Washington, DC 20380.

(4) Armed Forces units may not be authorized to participate when:

(i) The event directly or indirectly endorses or selectively benefits or favors (or appears to do so) any private individual, commercial venture, sect, fraternal organization, political group, or if it is associated with solicitation of votes in a political election.

(ii) Admission, seating and other accommodations or facilities are restricted in any manner with regard to race, creed, color or national origin.

(iii) The sponsoring organization or group excludes any person from its membership or practices any form of discrimination in its functions, based on race, creed, color or national origin.

(iv) An admission charge is levied on the public primarily to see participation by an Armed Forces unit.

(v) There is fund-raising of any type connected with the event, unless all profits are to be donated to a charity which is one of the consolidated programs recognized by the Federal Services Fund-Raising Program. These are the United Givers Fund Community Chest, National Health Agencies (as a group), the International Service Agencies, and the American Red Cross (when not included in a consolidated campaign). The Military Services' Welfare Societies (Army Emergency Relief, Navy Relief and Air Force Aid Society) are also included.

(5) Sponsors of an event must agree to reimburse the Military Services concerned for transportation and per diem when participation is authorized at no additional cost to the government.

(6) Participation by Armed Forces musical units in other areas is within the authority of local military commanders, and requests for participation should be made directly to those local military installations. All requests should be submitted no earlier than 60 days and preferably no later than 45 days prior to the event.

§ 705.34 Other special events.

(a) *Ship visits.* Requests for visits generally originate with civic groups desiring Navy participation in local events. Often, members of Congress endorse these requests, advising the Navy of their interest in a particular event. Because of the marked increase in requests for ship visits, and in order to give equal consideration to all requests, the Chief of Information has arranged for quarterly meetings of representatives from CHINFO, Commander, Navy Recruiting Command, Chief of Naval Operations and Chief of Legislative Affairs. Based on the importance of the event (nationally, regionally, or locally) location, and prospective audience, recommendations are consolidated and forwarded to the fleet commanders prior to their quarterly scheduling conferences.

(b) *Visits to Naval activities*—(1) *Types of visits.* (i) General visits or Open House are occasions when a ship or station acts as host to the general public. These visits will be conducted in accordance with instructions issued by Fleet and Force Commanders, District Commandants, or other cognizant authority.

(ii) Casual visits are visits to ships or stations by individuals or specific groups, as differentiated from the general public. Details and procedures concerning these visits are a matter of command discretion.

(iii) Tours are occasions when a ship or station is host to a specific group on a scheduled date. Some of the larger shore commands also regularly schedule one or more sightseeing type tours daily during seasons when many vacationers ask to visit the command.

(2) *General rules.* Prior approval for general visiting or Open House at any time other than civic-sponsored public observances and official ceremonies for Armed Forces Day, memorial Day, Independence Day, and Veterans Day, and for observances in overseas areas of similar significant holidays, will be requested as follows: Fleet units visiting U.S. ports, from Senior Officer present Afloat; fleet units visiting foreign ports, from commander ordering the visit; shore stations and district vessels in the United States, from District Commandants; and overseas shore stations, from the naval area commander.

(c) *Official functions.* (1) Navy units may be authorized by local commanding officers to participate in official government military and civic functions, except in the Washington DC area where OASD(PA) retains authority.

(2) Official government functions include those in which senior officials of the federal government are involved in the performance of their official duties.

(3) Official military functions include social activities held on military installations (or off, when it is certified that suitable facilities are not available on base), which are sponsored by the Navy, have as their principal purpose the promotion of esprit de corps, and are conducted primarily for active duty personnel and their guests.

(4) Official civic functions include such state, county or municipal events as inaugurals, dedications of public buildings and projects, and convening of legislative bodies and ceremonies for officially invited government visitors.

(5) Overseas, similar functions attended by comparable host-country officials in their official capacities might also be considered appropriate for Navy participation.

(d) A parade which is sponsored by the community as a whole (rather than by a single commercial venture) and held on a Sunday or holiday or at a time when shops are closed for business may be a public event for which participation could properly be authorized; representation by individual commercial ventures in such parades need not be a bar to Navy participation as long as the emphasis is planned and placed on the civic rather than commercial aspects. Such participation will be at no additional cost to the government.

(e) *Fund-raising events.* (1) Navy support of fund-raising events must be limited to recognized, joint or other authorized campaigns. Navy support of fund-raising events or projects for a single cause, even though the cause is a member of one of the federated, joint or authorized campaigns, or donates in part to one of several of the recognized campaigns, is not authorized by Department of Defense.

(2) Navy support for a single-cause fund-raising event may be authorized if the event is:

(i) In support of Navy recruiting objectives;

(ii) Supported by a letter indicating the local United Way representative has no objection; and

(iii) Approved by the local Navy Commander as a single-cause charity which has broad local benefit.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.35 Armed Forces participation in events in the public domain.

(a) Requests for bands, troops, units, teams, exhibits and other Armed Forces participation should be addressed to the nearest military installation. Local commanders have resources which they can commit to appropriate events if mission requirements permit. If no military installation is accessible, or if resources requested are not available locally or require approval by higher authorities, a standard Department of Defense Request Form should be completed. This form is used to evaluate the request, determine appropriateness of the event and compliance with Department of Defense policies, and eliminate repeated correspondence. The request form should be returned to the office or military command from which it was received unless another address is indicated.

(b) Basic criteria governing Armed Forces participation in public events have been developed by the Department of Defense to ensure compliance with public law, to assure equitable distribution of resources to as many appropriate events as possible, and to avoid excessive disruption of primary training and operational missions of the Military Services. the following general rules and information are included as an aid to you in understanding Department of Defense policies and in planning programs of mutual benefit to the Armed Forces and your community.

(1) When evaluating requests for Armed Forces participation in public events, the interests of the Department of Defense and the public at large, operational requirements of the Military services, and availability of resources are prime considerations. Commitment of resources to specific events must be balanced with the above factors and with requests for similar participation received from other sources.

(2) Department of Defense participation and cooperation must not directly or indirectly:

(i) Endorse or selectively benefit or favor or appear to endorse or selectively benefit or favor any private individual, group, corporation (whether for profit or nonprofit), sect, quasi-religious or ideological movement, fraternal organization, political organization, or commercial venture.

(ii) Be associated with the solicitation of votes in a political election. Sites such as commercial theaters or department stores, churches or fraternal halls; and events such as testimonials to private individuals or sectarian religious services, are generally inappropriate for Armed Forces participation.

(3) Participation by the Armed Forces in any event or activity may be authorized only if admission, seating and all other accommodations and facilities are available to all without regard to race, creed, color or national origin, and only if the sponsoring organization does not exclude any form of discrimination based on race, creed, color or national origin. This does not bar participation in events sponsored by nationally-recognized veteran's organizations when the program is oriented toward the veterans' interests, nor does it bar participation in nonpublic school events when the program is directed toward education or recruiting.

(i) No admission charge may be levied on the public solely to see an Armed Forces demonstration, unit or exhibit. When admission is charged, the Armed Forces activity must not be the sole or primary attraction.

(4) Armed Forces participation is authorized in a fund-raising event only when the sponsor certifies that all net profits in excess of actual operating costs will be donated to one of the consolidated programs recognized by the Federal Services Fund-Raising program. These include such agencies as the United Givers Fund, Community Chests, National Health Agencies (as a group), International Service Agencies and the military aid societies.

(5) When Armed Forces participation in an event is in the mutual interest of the Department of Defense and the sponsor of the event, participation will be authorized at no additional cost to the government. Additional costs to the government—travel and transportation of military personnel, meals and quarters or standard per diem allowance, etc.—will be borne by the sponsor.

(6) Department of Defense policy prohibits payment by the Armed Forces for rental of exhibit space, connection of electricity, or utility or janitorial costs.

(7) The duration of participation by military units in any one event is limited in the interests of proper utilization and equitable distribution of Armed Forces manpower and resources. While an exhibit might be scheduled for the duration of an event, a unit such as a military band is limited to three days.

(8) Armed Forces participation in professional sports events and post-season bowl games will normally be authorized at no additional cost to the government, will emphasize joint Service activity and must support recruiting programs. Participation in beauty contests, fashion shows, pageants, Christmas parades, and motion picture premieres is not authorized since military support would violate policy and appropriateness.

§ 705.36 Government transportation of civilians for public affairs purposes.

(a) *General policy.* (1) Regulations on transportation of civilians vary according to whether:

(i) The civilians are news media representatives or not.

(ii) The travel is local or nonlocal (see paragraph (b) of this section).

(iii) The purpose of the travel is to get to a desired destination or is to observe the Navy at first hand.

(2) Authority for embarkation of individuals in naval vessels and military aircraft is vested in the Chief of Naval Operations by § 700.710 of this chapter. Nothing in this part shall be construed as limiting his authority in this regard.

(3) The following policy has been established by DOD for providing all types of Navy transportation to non-Navy civilians.

(i) Military transport facilities shall not be placed in a position of competition with U.S. commercial carriers.

(A) When embarkation of a newsman is necessary for him to obtain news material about a ship, aircraft, cargo or embarked personnel, or when he is invited to report on a matter of special interest to the Navy, it is not considered that the transportation furnished him is in competition with commercial transport.

(B) An exception is also made for short trips between an airport (or other transportation center) and the command. Cars and buses within the resources of the command may be used for meeting guests or taking them to make their travel connections.

(ii) When authorization is requested for travel which is of interest to or will affect more than one command or Service, the approving authority will coordinate the request with all other interested commands, Services and Agencies.

(iii) Travel in connection with any public affairs program arranged by the Navy jointly with another Federal Department or Agency or a foreign government will be authorized only by the Assistant Secretary of Defense (Public Affairs, or those to whom he has delegated this authority. Navy commands desiring authorization of such travel will forward the request to the Chief of Information.

(iv) If a request for travel for nonlocal public affairs purposes is disapproved, sufficient reasons should be provided so that the action is clearly understood by the individual or group concerned.

(b) *Definition of local v. nonlocal travel.* (1) Local travel is travel within the immediate vicinity of the command concerned in connection with a public affairs program of local interest only. (For air travel within the continental U.S., about 150 miles or less is generally considered local.)

(2) Nonlocal travel is that conducted in connection with a public affairs program affecting more than one Service, geographic area or major command, usually of primary concern to higher authority.

(c) *Transportation of news media representatives.* (1) This section applies to media representatives who are embarked for the purpose of news gathering or of traveling to an area in order to cover a news event. It does not apply to:

(i) Correspondents when members of groups embarked as regular cruise guests of the Navy.

(ii) Casual trips by correspondents to ships in port or to shore stations in CONUS. Such visits may be authorized by officers in command or higher authority in accordance with instructions promulgated by the Chief of Naval Operations. Written orders are not required.

(2) Local travel. Commanding officers at all levels are authorized (under Defense Department policy) to approve local travel for public affairs purposes within the scope of the mission and responsibilities of their command, if:

(i) Public interest in the public affairs purpose involved is confined primarily to the vicinity of that command.

(ii) The travel is being provided for the benefit of local media and meets a naval public affairs objective.

(iii) Scheduled commercial air transportation is not readily available.

(iv) The aircraft to be used is a helicopter, or multiengine dual piloted aircraft, and is within the resources of the host command on a not-to-interfere basis. This provision does not apply to orientation flights.

(3) Nonlocal travel. (i) Requests for nonlocal travel will be submitted to the Chief of Information, who will forward them with his recommendations to the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs), as appropriate.

(ii) When the proposed travel is for news coverage of a major emergency nature and the coverage will be impaired or delayed, to the serious detriment of the interests of the Department of Defense, if military transportation is not provided, requests for such travel will be submitted to the Chief of Information, who will forward the request—if approved—to the Assistant Secretary of Defense (Public Affairs). The most expeditious means (including telephone) will be used by commands requesting such emergency travel. Justification will include both the public affairs purpose and the necessity for military carriers.

(4) Travel between the U.S. and overseas area.

(i) The Chief of Naval Operations may authorize military transportation for correspondents in unusual circumstances, upon recommendations of the Chief of Information and the Defense Department.

(ii) Requests for government transportation to cover specific assignments overseas should be made at least three weeks prior to the date required and should be addressed to the Assistant Secretary of Defense (Public Affairs) via the Chief of Information or Unified Commander, as appropriate. The requests should include:

(A) A statement that the correspondent is a full-time employee, or has a specific assignment, and that the trip is for the purpose of news gathering.

(B) Appropriate date of entry into area, port of entry, method of travel, proposed duration of visit and travel termination date.

(C) Assurance that the correspondent will observe currency control regulations, and sponsoring agency will guarantee financial obligations incurred.

(5) Embarkation of male correspondents between ports within CONUS.

(i) Male correspondents may be embarked in naval ships for passage between ports within the area of a single Fleet command for the purpose of news gathering at the discretion of the Sea Frontier Commander, Commandants of the Naval Districts, the Chief of naval Air Training, Fleet, Force and Type commanders and flag officers afloat who have been delegated authority to arrange directly with appropriate Fleet, Force and Type commanders for embarkation of civilians on a local cruise basis.

(ii) Invitational travel orders may be issued.

(6) Embarkation of female correspondents in naval vessels.

(i) Privileges equal to those given male correspondents will be accorded female correspondents whenever practicable.

(ii) Female correspondents may not be embarked overnight in a naval ship without prior approval of the appropriate Fleet Commander-in-Chief. This authority may be delegated to the numbered Fleet Commanders.

(7) Travel in ships of the Military Sealift Command. Correspondents may be carried in ships of the Military Sealift Command on either a space-required or space-available basis when travel is in the best interests of the Navy or the Department of Defense.

(i) Space-available travel will be used when practicable. A nominal charge is made by the Military Sealift Command and must be borne by the correspondents.

(ii) Space-required travel may be authorized when sufficiently in the interest of the Navy, and the charge may be borne by the Navy.

(iii) In either case, determination of Navy interests will be made by the

Chief of Information, guided by the transportation policy of the Chief of Naval Operations, whose approval of such embarkation is required.

(iv) Requests for such travel will be submitted to the Chief of Information, who will coordinate with the Chief of Naval Operations and/or the Assistant Secretary of Defense (Public Affairs), as appropriate.

(8) Point to point transportation within the continental United States in naval aircraft other than those operated by the Military Airlift Command.

(i) SECNAVINST 4630.2A contains guidance for travel in military aircraft other than those operated by the Military Airlift Command.

(ii) Naval activities desiring to arrange such transportation will address requests via the chain of command to the operational command of the lowest echelon which has been delegated authority to approve such requests.

(iii) Upon approval of such a request, the naval activity sponsoring the correspondent shall:

(A) Prepare travel orders.

(B) Ensure that any waiver forms, as may be required by governing directives, are executed.

(9) Embarkation of news media representatives of foreign citizenship:

(i) Requests from foreign news media representatives to cruise with units of the U.S. Navy are usually made to the nearest U.S. military installation known to the correspondent, and are often not made in the proper chain of command to the Fleet Commander unless authorized to effect arrangements for an underway cruise.

(A) if the request is received by a command which is not a subordinate of the Fleet Commander concerned, it will be forwarded to the U.S. Naval Attache assigned to the foreign newsman's country. The Attache will then forward the request to the appropriate Fleet Commander, with his recommendations and the result of a brief background check on the newsman and his employer.

(B) If the request is received by a subordinate of the appropriate Fleet Commander, it may be forwarded directly to the latter, but the U.S. Naval Attache in the newsman's country will be given the opportunity to comment on the proposed embarkation.

(ii) Naval commands should not introduce an embarked third-party (i.e., a foreign media representative) into a foreign country other than his own without first obtaining appropriate clearance from the country to be visited. Approval for entry should be forwarded via appropriate command channels to the cognizant U.S. Naval Attache.

(10) Security considerations.

(i) No media representative known to be affiliated with a group advocating the overthrow of the U.S. government will be permitted aboard naval ships or stations.

(ii) If security review is directed, the reason will be made clear to the correspondent prior to embarkation. News media people refusing to agree to observe security regulations may have their privileges suspended. Failure to observe security regulations will be reported to CHINFO and interested commands.

(d) *Transportation of other civilians.* (1) Although groups normally provide their own transportation to Navy commands, Navy transportation may be authorized when:

(i) Commercial transport is not available.

(ii) A professional group visit has been solicited by the Navy, such as participants in the Naval Academy Information Program ("Blue and Gold") or educators invited to an Aerospace Education Workshop.

(2) Requests for nonlocal transportation under the above circumstances will be made to the Chief of Naval Operations.

(3) Carrier-on-board-delivery (COD) flights and helicopters flights to ships are considered local transportation.

(4) When units or areas of a Unified Command are involved in the public affairs program in connection with which travel authorization is requested by a Navy command which is not a component of the Unified Command concerned, coordination will be effected by the host command, through command channels, via the Chief of Information, to the Assistant Secretary of Defense (Public Affairs), who—

as appropriate—will consult with the Unified Commander concerned.

(e) *Special programs.* (1) Cruises are discussed in Chapter 6, section 0604, para. 1 of the Navy Public Affairs Regulations.

(2) Embarkation of news media representatives, especially on operations and exercises, is discussed in Chapter 4, section 0405, paragraph 4 of the Navy Public Affairs Regulations.

(3) Other programs subject to special requirements or which have had exceptions authorized for them include:

(i) Naval Air Training Command Civilian Orientation Cruise Program, conducted by the Chief of Naval Air Training.

(ii) Joint Civilian Orientation Conference, conducted by the Assistant Secretary of Defense (Public Affairs).

(iii) Orientation flights in government aircraft, conducted in accordance with OPNAVINST 37107H.

(iv) Space-available air transportation may be provided Navy League members if they are invited to accompany a flag officer attending a Navy League convention or regional meeting and if the trip is economically justifiable, based on military travel considerations and not community relations or public affairs reasons. Approval in each instance will be obtained in advance from the Chief of Naval Operations.

(v) Air transportation for the Naval Sea Cadet Corps of the Navy League.

(A) Flights must be in Navy multiengine, transport type craft.

(B) Point-to-point flights on a space-required basis are governed by an annual quota set by the Chief of Naval Operations. Space-available transportation is authorized and will not be charged against this quota if it will not result in delays of takeoffs or a change in the itinerary planned for the primary mission.

(C) Flights must not interfere with operational commitments or training or results in additional expense to the government.

(D) This transportation is not available to other youth programs, including others sponsored by the Navy League.

(f) *Other instructions on transportation of non-Navy civilians.* Details on policy, procedures, and the transportation of certain categories of people will be found in OPNAVINST 5720.2G and DOD Directive 4515.13.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

§ 705.37 Public affairs and public service awards.

(a) *General.* (1) A number of public service awards are presented by the Department of Defense and the Navy to business and civic leaders, scientists and other nongovernment civilians. Other awards—military and civilian—are presented to members of the naval establishment.

(2) These awards are of public affairs interest in the locale where they are presented and also in the home towns of those who receive them.

(b) *Department of Defense awards.* (1) The Department of Defense Medal for Distinguished Public Service is presented to individuals. The Department of Defense Meritorious Award honors organizations.

(2) Details, including nominating procedures, are given in SECNAVINST 5061.12.

(c) *Secretary of the Navy awards.* (1) The following awards are presented by the Secretary of the Navy: The Navy Distinguished Public Service Award and Navy Meritorious Public Service Citation to individuals; the Navy Certificate of Commendation to members of special committees and groups; and the Navy Certificate of Merit to organizations and associations.

(2) Details are given in SECNAVINST 5061.12.

(3) Nominations for awards to military personnel are considered by the Board of Decorations and Medals, in accordance with SECNAVINST 1650.24A.

(4) Nominations for honorary awards to Department of the Navy civilian employees are considered by the Distinguished Civilian Service Awards Panel. (See Civilian Manpower Management Instruction 451.)

(d) *Chief of Information awards.* (1) Certificate of Public Relations Achievement.

(i) This certificate is signed by the Chief of Information. It honors individuals who are not Navy employees, corporations, or associations.

(ii) It was established to fill the need for a civilian award for public relations achievements which, while not meeting the criteria for public service awards presented by the Secretary of the Navy, are of such Navy-wide significance as to merit recognition at the Department level. Examples of these achievements might be a particularly well done feature article about the Navy in a nationally read newspaper or an outstanding contribution to a locally sponsored event, which ultimately gave national or regional recognition to the Navy.

(iii) The achievement for which the certificate is given shall meet the following criteria:

(A) Contribute to accomplishment of the public information objectives of the Navy.

(B) Be the result of a single outstanding project or program.

(C) Have been accomplished within one year of the date of the official letter of nomination.

(iv) Nominations will be submitted through appropriate administrative channels to the Chief of Information, and will include a description of the service rendered, a statement of its relevance to the accomplishment of the public affairs objectives of the Navy and a draft of the recommended citation. To avoid possible embarrassment, nominations shall be marked "For Official Use Only" and safeguarded until final action has been taken.

(2) CHINFO Merit Awards. (i) These awards, or certificates, are presented quarterly to Navy publications and broadcasts considered to be outstanding or to have shown improvement in meeting professional standards of journalism.

(ii) Publications and broadcasts eligible are those which inform the reader concerning aspects of service life or related matters which contribute to the well-being of naval personnel, their dependents, and civilian employees of the Navy. Civilian enterprise periodicals are included if produced for the exclusive use of a naval installation.

(iii) Nominations are made in two ways:

(A) Selection during regular review periodicals and broadast air-checks received by the Internal Relations Activity.

(B) Nominations from the field. Such nominations are informal and may be made by the officer-in-charge, publications editor, broadcast station manager, or public affairs officer to the chief of Information, Navy Department, Washington, DC 20350 (ATTN: OP-0071).

(3) Other awards pertaining to public affairs/internal relations.

(i) Silver Anvil award is given by the Public Relations Society of America for outstanding public relations programs carried out during the preceding year. Entry blanks and details may be obtained by writing directly to Public Relations Society of America, 845 Third Ave., New York, NY 10022. All Navy entries will be forwarded via the Chief of Information.

(ii) Freedom Foundation Awards of cash and medals are annually given to service personnel for letters on patriotic themes. Details are carried in ship and station publications, or may be obtained by writing to Freedom Foundations, Valley Forge, PA 19481.

(iii) Thomas Jefferson Awards are the prizes in an annual interservice competition sponsored by civilian media through the Department of Defense's Office of Information for the Armed Forces. The contest is open to all Armed Forces media—broadcast and print. Details can be obtained by writing to Office of Information, Department of the Navy, Washington, DC 20350.

(iv) Navy League Awards. Several annual awards are presented to naval personnel and civilians who have made a notable contribution to the importance of seapower. The awards are for inspirational leadership, scientific and technical progess, operational competence, literary achievement, etc. Nominations should be forwarded directly to Board of Awards, Navy League of the United States, 818 18th St., NW., Washington, DC 20006.

(v) Nonofficial awards to outstanding Navy students or training units.

(A) Various civilian organizations and private individuals have established awards to be presented to outstanding training units or naval students.

(B) Requests to establish an award for students in the Naval Air Training program should be forwarded to the Chief of Naval Air Training.

(C) Requests to establish an award which will involve more than one school (other than the Naval Air Training Program) will be forwarded to the Chief of Naval Personnel.

(D) All other cases may be decided by the Navy authority at the school concerned.

(E) Directives in the 5061, 1650 and 3590 series issued by pertinent authorities may provide further guidance in individual cases.

(vi) Awards established by a command to honor non-Navy civilians.

(A) Examples of such awards are "Good Neighbor" or "Honorary Crew Member" certificates.

(B) Established to honor persons who have been helpful to the command, they are a valuable community relations program. They should not be award to persons or organizations with which the command is associated in a commercial or governmental business capacity.

[41 FR 29101, July 15, 1976, as amended at 44 FR 6391, Feb. 1, 1979]

SUBCHAPTER B—NAVIGATION

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Sec.
706.1 Purpose of regulations.
706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.
706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

AUTHORITY: 33 U.S.C. 1605.

§ 706.1 Purpose of regulations.

(a) All ships are warned that, when U.S. naval vessels are met in international waters, certain navigational lights and sound-signalling appliances of some naval vessels may vary from the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (Senate Executive W. 93d Cong., 1st Sess.), as to number position, range, or arc of visibility of lights, as well as to the disposition and characteristics of sound-signalling appliances. These differences are necessitated by reason of the special construction or purpose of the naval ships. An example is the aircraft carrier where the two masthead lights are, in most instances, on the island superstructure considerably displaced from the center or keel line of the vessel when viewed from ahead, and the sidelights are at the forward end of the axial flight deck. Certain other naval vessels cannot comply with the horizontal separation requirements for masthead lights, and the two masthead lights on even large naval vessels will thus appear to be crowded together when viewed from a distance. Naval vessels may also have unorthodox navigational light arrangements or characteristics when seen either underway or at anchor.

(b) Naval vessels may also be expected to display certain other lights. These lights include, but are not limited to, different colored rotating beacons, different colored fixed and rotary wing aircraft landing signal lights, red aircraft warning lights, and red contour approach lights on replenishment-type ships. These lights may be shown in combination with the navigational lights.

(c) During peacetime naval maneuvers, naval ships, alone or in company, may also dispense with showing any lights, though efforts will be made to display lights on the approach of shipping.

(d) Executive Order 11964 of January 19, 1977, and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972, as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, shall not apply to a vessel of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel to comply fully with the provisions without interfering with the special function of the vessel.

(e) Executive Order 11964 also provides that the Secretary of the Navy is authorized to exempt, in accordance with Rule 38 of the International Regulations for preventing Collisions at Sea, 1972, any vessel, or class of vessels, the keel of which is laid, or which is at a corresponding stage of construction, before July 15, 1977, from full compliance with the International Regulations, provided that such vessel, or class of vessels, complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

(f) This part consolidates and codifies certifications and exemptions granted by the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605. It has been determined that, because of their special construction or purpose, the vessels and classes of vessels listed in this part cannot comply fully with all of the requirements of the International Regulations for Preventing Collisions at Sea, 1972.

[42 FR 36434, July 14, 1977, as amended at 42 FR 48876, Sept. 26, 1977; 45 FR 43165, June 26, 1980]

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

The Secretary of the Navy hereby finds and certifies that each vessel listed in this section is a naval vessel of special construction or purpose, and that, with respect to the position of the navigational lights listed in this section, it is not possible to comply fully with the requirements of the provisions enumerated in the International Regulations for Preventing Collisions at Sea, 1972, without interfering with the special function of the vessel. The Secretary of the Navy further finds and certifies that the navigational lights in this section are in the closest possible compliance with the applicable provisions of the International Regulations for Preventing Collisions at Sea, 1972.

Table One

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS ALACRITY	AG-520	4.3
USS ASSURANCE	AG-521	4.3
USS PLAINVIEW	AGEH-1	4.3
USS DOLPHIN	AGSS-555	0.6
USS TANG	AGSS-563	3.4
USS OLIVER HAZARD PERRY	FFG 7	1.6
USS JOSEPH STRAUSS	DDG-16	2.4
USS GOLDSBOROUGH	DDG-20	2.4
USS BENJAMIN STODDERT	DDG-22	2.4
USS MC INERNY	FFG 8	1.6
USS WADSWORTH	FFG 9	1.6
USS DUNCAN	FFG 10	1.6
USS CLARK	FFG 11	1.6
USS GEORGE PHILIP	FFG 12	1.6
USS SAMUEL ELIOT MORISON	FFG 13	1.6
USS SIDES	FFG 14	1.6
USS ESTOCIN	FFG 15	1.6
USS SPRAGUE	FFG 16	1.6
USS ANTRIM	FFG 20	1.6
USS FAHRION	FFG 22	1.6
USS LEWIS B. FULLER	FFG 23	1.6
USS JACK WILLIAMS	FFG 24	1.6
USS COPELAND	FFG 25	1.6
USS GALLERY	FFG 26	1.6
USS MAHLON S. TISDALE	FFG 27	1.6
USS BOONE	FFG 28	1.6
USS STEPHEN W. GROVES	FFG 29	1.6
USS REID	FFG 30	1.6
USS STARK	FFG 31	1.6
USS JOHN L. HALL	FFG 32	1.6
USS JARRETT	FFG 33	1.6
USS AUBREY FITCH	FFG 34	1.6
USS UNDERWOOD	FFG 36	1.6
USS CROMMELIN	FFG 37	1.6
USS CURTS	FFG 38	1.6
USS DOYLE	FFG 39	1.6
USS HALYBURTON	FFG 40	1.6
USS MCCLUSKY	FFG 41	1.6
USS KLAKRING	FFG 42	1.6
USS THACH	FFG 43	1.6
USS DEWERT	FFG 45	1.6
USS RENTZ	FFG 46	1.6
USS NICHOLAS	FFG 47	1.6
USS VANDERGRIFT	FFG 48	1.6
USS ROBERT G. BRADLEY	FFG 49	1.6
USS TAYLOR	FFG 50	1.6
USS GARY	FFG 51	1.6
USS CARR	FFG 52	1.6
USS HAWES	FFG 53	1.6
USS FORD	FFG 54	1.6
USS ELROD	FFG 55	1.6
USS SIMPSON	FFG 56	1.6
USS ANTELOPE	PG-86	2.3
USS READY	PG-87	2.3
USS TACOMA	PG-92	2.3
USS WELCH	PG-93	2.3
USS GRAND RAPIDS	PG-98	2.3
USS DOUGLAS	PG-100	2.3
USS IWO JIMA	LPH-2	2.9
USS OKINAWA	LPH-3	3.2
USS GUADALCANAL	LPH-7	3.0
USS GUAM	LPH-9	3.3
USS TRIPOLI	LPH-10	3.3
USS NEW ORLEANS	LPH-11	3.3
USS INCHON	LPH-12	3.0
USS CONSTANT	MSO-427	3.5
USS DASH	MSO-428	3.3
USS DETECTOR	MSO-429	3.5
USS DIRECT	MSO-430	3.2
USS DOMINANT	MSO-431	3.2
USS ENGAGE	MSO-433	3.6
USS ENHANCE	MSO-437	3.5
USS ESTEEM	MSO-438	3.4
USS EXCEL	MSO-439	3.3
USS EXPLOIT	MSO-440	3.3
USS EXULTANT	MSO-441	3.2
USS FEARLESS	MSO-442	3.2
USS FIDELITY	MSO-443	3.2
USS FORTIFY	MSO-446	3.6
USS ILLUSIVE	MSO-448	3.4
USS IMPERVIOUS	MSO-449	3.8
USS IMPLICIT	MSO-455	3.7
USS INFLICT	MSO-456	3.5
USS PLUCK	MSO-464	3.5
USS CONQUEST	MSO-488	3.4
USS GALLANT	MSO-489	3.2
USS LEADER	MSO-490	3.3
USS PLEDGE	MSO-492	3.4
USS ADROIT	MSO-509	3.5

Table One—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS AFFRAY	MSO-511	
	NR-1	3.5
		2.7
USS TANG	SS-563	3.35
USS WAHOO	SS-565	3.35
USS TROUT	SS-566	3.65
USS GUDGEON	SS-567	3.35
USS SAILFISH	SS-572	3.96
USS DARTER	SS-576	0.61
USS GRAYBACK	SS-574	4.27
USS BONEFISH	SS-582	1.54
USS NAUTILUS	SSN-571	3.05
USS SEAWOLF	SSN-575	3.35
USS SKATE	SSN-578	1.22
USS SWORDFISH	SSN-579	0.61
USS SARGO	SSN-583	0.61
USS SEADRAGON	SSN-584	0.61
USS SKIPJACK	SSN-585	1.22
USS SCAMP	SSN-588	1.52
USS SCULPIN	SSN-590	1.22
USS SHARK	SSN-591	1.30
USS SNOOK	SSN-592	1.22
USS PERMIT	SSN-594	2.74
USS PLUNGER	SSN-595	2.74
USS BARB	SSN-596	2.70
USS TULLIBEE	SSN-597	0.90
USS POLLACK	SSN-603	3.96
USS HADDO	SSN-604	3.96
USS JACK	SSN-605	4.57
USS TINOSA	SSN-606	3.96
USS DACE	SSN-607	2.74
USS GUARDFISH	SSN-612	4.27
USS FLASHER	SSN-613	4.27
USS GREENLING	SSN-614	4.27
USS GATO	SSN-615	4.20
USS HADDOCK	SSN-621	3.05
USS STURGEON	SSN-637	2.44
USS WHALE	SSN-638	2.44
USS TAUTOG	SSN-639	2.44
USS GRAYLING	SSN-646	2.44
USS POGY	SSN-647	2.40
USS ASPRO	SSN-648	2.40
USS SUNFISH	SSN-649	2.40
USS PARGO	SSN-650	2.40
USS QUEENFISH	SSN-651	1.52
USS PUFFER	SSN-652	2.40
USS RAY	SSN-653	1.52
USS SANDLANCE	SSN-660	2.40
USS LAPON	SSN-661	2.40
USS GURNARD	SSN-662	1.52
USS HAMMERHEAD	SSN-663	2.40
USS SEA DEVIL	SSN-664	2.40
USS GUITARRO	SSN-665	2.40
USS HAWKBILL	SSN-666	1.52
USS BERGALL	SSN-667	2.40
USS SPADEFISH	SSN-668	2.40
USS SEAHORSE	SSN-669	2.40
USS FINBACK	SSN-670	2.40
USS NARWHAL	SSN-671	2.74
USS PINTADO	SSN-672	1.52
USS FLYING FISH	SSN-673	2.40
USS TREPANG	SSN-674	2.40
USS BLUEFISH	SSN-675	2.40

Table One—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS BILLFISH	SSN-676	2.40
USS DRUM	SSN-677	1.52
USS ARCHERFISH	SSN-678	2.40
USS SILVERSIDES	SSN-679	2.40
USS WILLIAM H BATES	SSN-680	2.40
USS BATFISH	SSN-681	2.40
USS TUNNY	SSN-682	2.40
USS PARCHE	SSN-683	2.40
USS CAVALLA	SSN-684	2.40
USS GLENARD P LIPSCOMB	SSN-685	3.20
USS MENDEL RIVERS	SSN-686	2.40
USS RICHARD B RUSSELL	SSN-687	2.40
USS LOS ANGELES	SSN-688	6.10
USS BATON ROUGE	SSN-689	6.10
USS PHILADELPHIA	SSN-690	6.10
USS MEMPHIS	SSN-691	6.10
USS OMAHA	SSN-692	6.10
USS CINCINNATI	SSN-693	3.49
USS GROTON	SSN-694	3.45
USS BIRMINGHAM	SSN-695	3.49
USS NEW YORK CITY	SSN-696	3.49
USS INDIANAPOLIS	SSN-697	3.49
USS BREMERTON	SSN-698	3.49
USS JACKSONVILLE	SSN-699	3.35
USS DALLAS	SSN-700	3.5
USS LA JOLLA	SSN-701	3.5
USS PHOENIX	SSN-702	3.5
USS BOSTON	SSN-703	3.5
USS BALTIMORE	SSN-704	3.5
USS CITY OF CORPUS CHRISTI	SSN-705	3.5
USS ALBUQUERQUE	SSN-706	3.5
USS PORTSMOUTH	SSN 707	3.5
USS MINNEAPOLIS-ST. PAUL	SSN-708	3.5
USS HYMAN G. RICKOVER	SSN-709	3.5
USS AUGUSTA	SSN-710	3.5
USS SAN FRANCISCO	SSN 711	3.5
USS ATLANTA	SSN-712	3.5
USS HOUSTON	SSN-713	3.5
USS NORFOLK	SSN-714	3.5
USS BUFFALO	SSN 715	3.5
USS SALT LAKE CITY	SSN 716	3.5
USS OLYMPIA	SSN 717	3.5
USS HONOLULU	SSN-718	3.5
USS GEORGE WASHINGTON	SSBN-598	4.11
USS PATRICK HENRY	SSBN-599	4.11
USS THEODORE ROOSEVELT	SSBN-600	4.11
USS ROBERT E LEE	SSBN-601	4.11
USS ABRAHAM LINCOLN	SSBN-602	4.11
USS ETHAN ALLEN	SSBN-608	3.73
USS SAM HOUSTON	SSBN-609	3.73
USS THOMAS A EDISON	SSBN-610	3.73
USS JOHN MARSHALL	SSBN-611	3.73
USS LAFAYETTE	SSBN-616	3.58
USS ALEXANDER HAMILTON	SSBN-617	3.58
USS THOMAS JEFFERSON	SSBN-618	3.73
USS ANDREW JACKSON	SSBN-619	3.58
USS JOHN ADAMS	SSBN-620	3.58
USS JAMES MONROE	SSBN-622	3.58
USS NATHAN HALE	SSBN-623	3.58
USS WOODROW WILSON	SSBN-624	3.58
USS HENRY CLAY	SSBN-625	3.58

Table One—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
USS DANIEL WEBSTER	SSBN-626	3.58
USS JAMES MADISON	SSBN-627	3.58
USS TECUMSEH	SSBN-628	3.58
USS DANIEL BOONE	SSBN-629	3.58
USS JOHN C CALHOUN	SSBN-630	3.58
USS ULYSSES S GRANT	SSBN-631	3.58
USS VON STEUBEN	SSBN-632	3.58
USS CASIMIR PULASKI	SSBN-633	3.58
USS STONEWALL JACKSON	SSBN-634	3.58
USS SAM RAYBURN	SSBN-635	3.58
USS NATHANAEL GREENE	SSBN-636	3.40
USS BENJAMIN FRANKLIN	SSBN-640	3.58
USS SIMON BOLIVAR	SSBN-641	3.60
USS KAMEHAMEHA	SSBN-642	3.58
USS GEORGE BANCROFT	SSBN-643	3.60
USS LEWIS & CLARK	SSBN-644	3.60
USS JAMES K POLK	SSBN-645	3.60
USS GEORGE C MARSHALL	SSBN-654	3.60
USS HENRY L STIMSON	SSBN-655	3.60
USS GEORGE WASHINGTON CARVER	SSBN-656	3.60
USS FRANCIS SCOTT KEY	SSBN-657	3.60
USS MARIANO G VALLEJO	SSBN-658	3.60
USS WILL ROGERS	SSBN-659	3.60
USS OHIO	SSBN-726	3.70
USS MICHIGAN	SSBN-727	3.70
USS FLORIDA	SSBN-728	3.70
USS GEORGIA	SSBN-729	3.70
USS RHODE ISLAND	SSBN-730	3.70
USS ALABAMA	SSBN-731	3.70
AALC JEFF(B)	ACV	7.21
USS ALASKA	SSBN-732	3.70
USS NEVADA	SSBN-733	3.70
USS PROVIDENCE	SSN-719	3.5
LCAC (class)	LCAC 1 through LCAC 100	[1] 6.51
LCAC (class)	LCAC 1 through LCAC 100	[2] 7.94
USS CLIFTON SPRAGUE	FFG-16	1.6
USS JOHN A. MOORE	FFG-19	1.6
USS ANTRIM	FFG-20	1.6
USS FLATLEY	FFG-21	1.6
USS CHICAGO	SSN 721	3.5
USS PITTSBURGH	SSN 720	3.5
USS REUBEN JAMES	FFG-57	1.6
USS SAMUEL B. ROBERTS	FFG-58	1.6
USS KEY WEST	SSN 722	3.5

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[1] The permanent masthead light is 5.26 meters athwartship to port of centerline, 5.49 meters above the main deck.

[2] The temporary masthead light is 3.98 meters athwartship to starboard of centerline, 4.06 meters above the main deck.

Table Two

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS LEXINGTON	CVT-16	12.2	1.5	2	8.2	2	0.8	113.4	13.7
USS MIDWAY	CV-41	19.0	0.3	2	6.4	2	0.6	117.0	15.8
USS CORAL SEA	CV-43	18.9	0.16	2	6.2	2	0.16	116.7	19.9
USS FORRESTAL	CV-59	26.2	0.6	2	6.7	2	1.2	128.0	22.2
USS SARATOGA	CV-60	26.4	0.9	2	7.6	2	0.9	132.3	22.3
USS RANGER	CV-61	25.9	0.6	2	7.3	2	0.8	132.9	24.5
USS INDEPENDENCE	CV-62	26.4	0.9	2	8.4	2	1.1	132.9	21.3
USS KITTY HAWK	CV-63	28.0	0.7	2	6.9	2	1.2	175.6	24.8
USS CONSTELLATION	CV-64	28.9	0.4	2	6.7	2	0.9	175.6	21.9
USS ENTERPRISE	CVN-65	23.6	0.6	2	5.9	2	0.9	178.0	23.6
USS AMERICA	CV-66	28.6	0.9	2	5.7	2	0.8	164.6	22.4
USS JOHN F KENNEDY	CV-67	28.6	1.3	2	6.4	2	0.9	160.9	22.9
USS NIMITZ	CVN-68	28.6	0.2	2	9.0	2	0.6	189.0	22.0
USS DWIGHT D EISENHOWER	CVN-69	28.6	0.2	2	9.0	2	0.6	189.0	22.0
USS TARAWA	LHA-1	10.0	—	1	—	1	2.4	71.0	—
USS SAIPAN	LHA-2	10.0	—	1	—	1	2.4	71.0	—
USS BELLEAU WOOD	LHA-3	10.0	—	—	—	—	2.7	72.4	—
USS NASSAU	LHA-4	10.0	—	—	—	—	2.7	72.4	—
USS PELELIU	LHA-5	10.0	[4]—	—	—	—	2.6	72.4	—
AALC JEFF(B) [1]	ACV	4.01	………	………	………	………	………	………	………
USS IWO JIMA	LPH-2	10.6	—	1	2.1	2	1.1	61.0	—
USS OKINAWA	LPH-3	10.6	—	1	2.2	2	1.3	61.0	—
USS GUADALCANAL	LPH-7	10.6	—	1	2.5	2	0.2	61.0	—
USS GUAM	LPH-9	10.6	—	1	2.0	2	0.2	48.8	—
USS TRIPOLI	LPH-10	10.6	—	1	2.2	2	0.4	47.5	—
USS NEW ORLEANS	LPH-11	10.6	—	1	2.2	2	0.5	50.0	—
USS INCHON	LPH-12	10.6	—	1	2.2	2	0.4	47.5	—
USS PENGASIUS	PHM-1	—	—	—	—	—	—	8.4	—
USS HERCULES	PHM-2	—	—	—	—	—	—	8.4	—
USS TAURUS	PHM-3	—	—	—	—	—	—	8.4	—
USS AQUILA	PHM-4	—	—	—	—	—	—	8.4	—
USS ANES	PHM-5	—	—	—	—	—	—	8.4	—
USS GEMINI	PHM-6	—	—	—	—	—	—	8.4	—
LCAC (class)	LCAC 1 through LCAC 100	5.26 (Perm.)[2]	………	………	………	………	………	………	[3]1.5

Table Two—Continued

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
LCAC (class)	LCAC 1 through LCAC 100	3.98 (Temp.)[4]							[3]1.5

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[1] On AALC JEFF(B) the masthead light is located 4.01 meters athwartship to port of centerline, at frame five, 4.79 meters above the main deck.
[2] The permanent masthead light is 5.26 meters athwartship to port of centerline, at frame 3, 5.49 meters above the main deck.
[3] The sidelights are on top of the port and starboard deckhouses 3.28 meters above the hull.
[4] The temporary masthead light is 3.98 meters athwartship to starboard of centerline 4.06 meters above the main deck.

Table Three

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS DOLPHIN	AGSS-555	227.5°	119°	191°	2.1	10.8	1.8	0.5 above
USS TANG	AGSS-563	232°	116°	252°	3.1	3.1	2.2	0.5 above
USS WAHOO	SS-565	232°	116°	252°	3.1	14.3	2.3	0.5 above
USS TROUT	SS-566	226°	115°	252°	2.9	13.7	1.9	1.5 below
USS GUDGEON	SS-567	232°	115°	252°	2.9	13.7	1.9	0.7 above
USS SAILFISH	SS-572	290°	114°	252°	2.4	10.7	2.0	0.8 above
USS SALMON	SS-573	228°	115°	252°	2.4	10.7	2.0	1.5 below
USS GREYBACK	SS-574	226°	115°	252°	3.1	9.8	4.0	2.1 above
USS DARTER	SS-576	226°	116°	252°	2.4	10.7	1.0	1.1 above
USS BARBEL	SS-580	230°	117°	252°	3.4	15.2	2.7	same height
USS BLUEBACK	SS-581	230°	117°	252°	3.4	15.2	2.7	same height
USS BONEFISH	SS-582	230°	117°	252°	3.4	15.2	2.7	same height
USS NAUTILUS	SSN-571	226°	113°	252°	3.1	16.7	1.8	1.5 below
USS SEAWOLF	SSN-575	226°	113°	252°	2.7	16.5	1.9	2.5 below
USS SKATE	SSN-578	230°	113°	252°	2.7	12.5	1.8	2.4 below
USS SWORDFISH	SSN-579	230°	113°	252°	2.7	12.5	1.8	2.4 below
USS SARGO	SSN-583	228°	113°	252°	2.7	12.5	1.8	2.3 below
USS SEADRAGON	SSN-584	228°	113°	252°	2.7	12.5	1.8	2.3 below
USS SKIPJACK	SSN-585	250°	113°	252°	4.0	33.5	2.1	0.4 below
USS SCAMP	SSN-588	232°	113°	252°	4.0	33.5	2.1	0.8 below

USS SCULPIN	SSN-590	230°	113°	252°	4.0	33.5	2.1	0.5 below
USS SHARK	SSN-591	228°	113°	252°	4.0	33.5	2.1	0.5 below
USS SNOOK	SSN-592	228°	113°	252°	4.0	33.5	2.1	1.3 below
USS PERMIT	SSN-594	230°	116°	252°	4.1	37.8	3.1	1.9 below
USS PLUNGER	SSN-595	226°	114°	252°	4.1	37.8	3.1	1.7 below
USS BARB	SSN-596	238°	115°	252°	4.1	37.8	3.1	1.5 below
USS TULLIBEE	SSN-597	226°	113°	252°	2.9	32.0	2.7	2.3 below
USS POLLACK	SSN-603	228°	114°	252°	4.1	37.8	3.1	1.5 below
USS HADDO	SSN-604	226°	114°	252°	4.1	37.8	3.1	1.5 below
USS JACK	SSN-605	226°	113°	252°	4.1	37.8	3.1	1.5 below
USS TINOSA	SSN-606	228°	114°	252°	4.1	37.8	3.1	1.5 below
USS DACE	SSN-607	226°	114°	252°	4.1	37.8	3.1	1.5 below
USS GUARDFISH	SSN-612	240°	114°	252°	4.1	37.8	3.1	1.5 below
USS FLASHER	SSN-613	240°	114°	252°	4.1	37.8	3.1	1.5 below
USS GREENLING	SSN-614	236°	114°	252°	4.1	37.8	3.1	1.5 below
USS GATO	SSN-615	232°	114°	252°	4.1	37.8	3.1	1.5 below
USS HADDOCK	SSN-621	232°	114°	252°	4.1	37.8	3.1	1.5 below
USS STURGEON	SSN-637	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS WHALE	SSN-638	226°	113°	252°	3.8	5.2	3.4	1.4 below
USS TAUTOG	SSN-639	226°	113°	252°	3.8	5.2	3.4	1.4 below
USS GRAYLING	SSN-646	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS POGY	SSN-647	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS ASPRO	SSN-648	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS SUNFISH	SSN-649	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS PARGO	SSN-650	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS QUEENFISH	SSN-651	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS PUFFER	SSN-652	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS RAY	SSN-653	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS SANDLANCE	SSN-660	226°	113°	252°	3.8	5.2	3.4	1.4 below
USS LAPON	SSN-661	226°	114°	252°	3.8	5.2	3.4	1.4 below
USS GURNARD	SSN-662	232°	116°	252°	3.8	5.2	3.4	1.4 below
USS HAMMERHEAD	SSN-663	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS SEA DEVIL	SSN-664	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS GUITARRO	SSN-665	228°	114°	252°	3.8	5.2	3.4	1.4 below
USS HAWKBILL	SSN-666	232°	113°	252°	3.8	5.2	3.4	1.4 below
USS BERGALL	SSN-667	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS SPADEFISH	SSN-668	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS SEAHORSE	SSN-669	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS FINBACK	SSN-670	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS NARWHAL	SSN-671	228°	113°	252°	3.8	5.2	2.0	1.4 below
USS PINTADO	SSN-672	234°	120°	252°	3.8	5.2	3.4	1.4 below
USS FLYING FISH	SSN-673	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS TREPANG	SSN-674	228°	113°	252°	3.8	5.2	3.4	1.4 below
USS BLUEFISH	SSN-675	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS BILLFISH	SSN-676	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS DRUM	SSN-677	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS ARCHERFISH	SSN-678	232°	113°	252°	3.8	5.2	3.4	1.4 below
USS SILVERSIDES	SSN-679	228°	114°	252°	3.8	5.2	3.4	1.4 below

Table Three—Continued

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS WILLIAM H BATES	SSN-680	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS BATFISH	SSN-681	234°	115°	252°	3.8	5.2	3.4	1.4 below
USS TUNNY	SSN-682	234°	114°	252°	3.8	5.2	3.4	1.4 below
USS PARCHE	SSN-683	232°	114°	252°	3.8	5.2	3.4	1.4 below
USS CAVALLA	SSN-684	234°	113°	252°	3.8	5.2	3.4	1.4 below
USS GLENARD P LIPSCOMB	SSN-685	244°	114°	252°	3.8	5.2	3.4	1.4 below
USS L MENDEL RIVERS	SSN-686	236°	113°	252°	3.8	5.2	3.4	1.4 below
USS RICHARD B RUSSELL	SSN-687	236°	114°	252°	3.8	5.2	3.4	1.3 below
USS LOS ANGELES	SSN-688	236°	115°	252°	4.2	6.1	2.0	1.6 below
USS BATON ROUGE	SSN-689	234°	115°	252°	4.2	6.1	2.0	1.6 below
USS PHILADELPHIA	SSN-690	238°	115°	252°	4.2	6.1	2.0	1.6 below
USS MEMPHIS	SSN-691	236°	115°	252°	4.3	6.1	2.0	1.6 below
USS OMAHA	SSN-692	236°	115°	252°	4.2	6.1	2.0	1.6 below
USS CINCINNATI	SSN-693			209°	4.3	6.1	3.4	1.6 below
USS GROTON	SSN-694	226°55′	116°37′	219°	4.3	6.6	3.5	1.7 below
USS BIRMINGHAM	SSN-695	—	—	209°	4.3	6.1	3.4	1.7 below
USS NEW YORK CITY	SSN-696	—	—	209°	4.3	6.1	3.4	1.7 below
USS INDIANAPOLIS	SSN-697			209°	4.3	6.1	3.4	1.7 below
USS BREMERTON	SSN-698			209°	4.2	6.1	3.5	1.7 below
USS JACKSONVILLE	SSN-699			211°	4.2	6.1	3.5	1.7 below
USS DALLAS	SSN-700				4.1	6.5	3.4	1.7 below
USS LA JOLLA	SSN-701				4.2	6.1	3.5	1.7 below
USS PHOENIX	SSN-702				4.2	6.1	3.5	1.7 below
USS BOSTON	SSN-703				4.2	6.2	3.8	1.7 below
USS BALTIMORE	SSN-704			209°	4.2	6.1	3.5	1.7 below
USS CITY OF CORPUS CHRISTI	SSN-705			209°	4.2	6.1	3.5	1.7 below
USS ALBUQUERQUE	SSN-706		114°		4.2	6.1	3.5	1.7 below
USS PORTSMOUTH	SSN 707			209°	4.2	6.1	3.5	1.7 below
MINNEAPOLIS-ST. PAUL	SSN 708			209°	4.2	6.2	3.5	1.7 below
USS HYMAN G. RICKOVER	SSN 709			209°	4.2	6.1	3.4	1.7 below.
USS AUGUSTA	SSN 710			209°	4.2	6.1	3.4	1.7 below.
USS SAN FRANCISCO	SSN-711				4.1	6.5	3.4	1.7 below
USS ATLANTA	SSN-712				4.3	6.1	3.4	1.6 below
USS HOUSTON	SSN-713			209°	4.3	6.1	3.4	1.7 below
USS NORFOLK	SSN-714			209°	4.3	6.1	3.4	1.7 below
USS BUFFALO	SSN 715			209°	4.2	6.1	3.5	1.7 below
USS SALT LAKE CITY	SSN 716			209°	4.2	6.1	3.5	1.7 below
USS OLYMPIA	SSN 717			209°	4.2	6.1	3.4	1.7 below
USS HONOLULU	SSN 718			209°	4.2	6.1	3.4	1.7 below.

USS GEORGE WASHINGTON	SSBN-598	240°	118°	255°	3.8	46.0	2.1	0.6 below
USS PATRICK HENRY	SSBN-599	238°	118°	252°	3.8	46.0	2.1	0.4 below
USS THEODORE ROOSEVELT	SSBN-600	240°	115°	252°	3.8	46.0	2.1	1.2 below
USS ROBERT E LEE	SSBN-601	242°	113°	252°	3.8	46.0	2.1	0.5 below
USS ABRAHAM LINCOLN	SSBN-602	226°	114°	252°	3.8	39.3	2.1	same height
USS ETHAN ALLEN	SSBN-608	226°	120°	252°	3.8	7.6	2.1	1.4 above
USS SAM HOUSTON	SSBN-609		114°	252°	3.8	7.6	2.1	1.7 above
USS THOMAS A EDISON	SSBN-610	230°	115°	252°	3.8	7.6	2.1	1.2 above
USS JOHN MARSHALL	SSBN-611	228°	113°	252°	3.8	7.6	2.1	0.9 above
USS LAFAYETTE	SSBN-616	236°	113°	252°	3.8	7.3	2.0	1.2 above
USS ALEXANDER HAMILTON	SSBN-617	232°	114°	252°	3.8	7.3	2.0	1.1 above
USS THOMAS JEFFERSON	SSBN-618	230°	113°	252°	3.8	7.6	2.1	1.8 above
USS ANDREW JACKSON	SSBN-619	240°	113°	252°	3.8	7.3	2.0	1.8 above
USS JOHN ADAMS	SSBN-620	236°	115°	252°	3.8	7.3	2.0	1.0 above
USS JAMES MONROE	SSBN-622	230°	114°	252°	3.8	7.3	2.0	1.2 above
USS NATHAN HALE	SSBN-623	226°	115°	252°	3.8	7.3	2.0	1.3 above
USS WOODROW WILSON	SSBN-624	226°	115°	252°	3.8	7.3	2.0	1.0 above
USS HENRY CLAY	SSBN-625	236°	117°	252°	3.8	7.3	2.0	1.0 above
USS DANIEL WEBSTER	SSBN-626	236°	114°	252°	3.8	7.3	2.0	1.0 above
USS JAMES MADISON	SSBN-627	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS TECUMSEH	SSBN-628	236°	114°	252°	3.8	7.3	2.0	1.0 above
USS DANIEL BOONE	SSBN-629	232°	114°	252°	3.8	7.3	2.0	1.6 above
USS JOHN C CALHOUN	SSBN-630	226°	113°	252°	3.8	7.3	2.0	same height
USS ULYSSES S GRANT	SSBN-631	226°	113°	252°	3.8	7.3	2.0	1.6 above
USS VON STUEBEN	SSBN-632	230°	114°	252°	3.8	7.3	2.0	1.6 above
USS CASIMIR PULASKI	SSBN-633	228°	113°	252°	3.8	7.3	2.0	1.4 above
USS STONEWALL JACKSON	SSBN-634	236°	114°	252°	3.8	7.3	2.0	1.4 above
USS SAM RAYBURN	SSBN-635	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS NATHANAEL GREENE	SSBN-636	232°	113°	252°	3.8	7.3	2.0	1.6 above
USS BENJAMIN FRANKLIN	SSBN-640	230°	114°	252°	3.8	7.6	2.1	0.9 below
USS SIMON BOLIVAR	SSBN-641	234°	115°	252°	3.8	7.6	2.1	0.8 below
USS KAMEHAMEHA	SSBN-642	236°	117°	252°	3.8	7.5	2.1	same height
USS GEORGE BANCROFT	SSBN-643	234°	114°	252°	3.8	7.6	2.1	0.9 below
USS LEWIS AND CLARK	SSBN-644	230°	113°	252°	3.8	7.6	2.1	0.6 below
USS JAMES K POLK	SSBN-645	230°	114°	252°	3.8	7.6	2.1	0.9 below
USS GEORGE C MARSHALL	SSBN-654	226°	113°	252°	3.8	7.6	2.1	0.5 below
USS HENRY L STIMSON	SSBN-655	230°	114°	252°	3.8	7.6	2.1	0.6 below
USS GEORGE WASHINGTON CARVER	SSBN-656	234°	114°	252°	3.8	7.6	2.1	0.6 below
USS FRANCIS SCOTT KEY	SSBN-657	226°	113°	252°	3.8	7.6	2.1	0.3 below
USS MARIANO G VALLEJO	SSBN-658	234°	116°	252°	3.8	7.6	2.1	1.1 below
USS WILL ROGERS	SSBN-659	226°	114°	252°	3.8	7.6	2.1	0.6 below
USS OHIO	SSBN-726	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
USS MICHIGAN	SSBN-727	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
USS FLORIDA	SSBN-728			209°	5.3	9.0	3.8	4.0 below
USS GEORGIA	SSBN-729	225°	112.5°	209°	5.3	9.0	3.8	4.0 below
USS RHODE ISLAND	SSBN-730			209°	5.3	9.0	3.8	4.0 below
USS ALABAMA	SSBN-731			209°	5.3	9.0	3.8	4.0 below
NR-1	NR-1	238.5°	114°	136.5°	1.5	4.1	2.1	

Table Three—Continued

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
USS ALASKA	SSBN-732			209°	5.3	9.0	3.8	4.0 below
USS NEVADA	SSBN-733			209°	5.3	9.0	3.8	4.0 below
USS PROVIDENCE	SSN-719			209°	4.2	6.1	3.4	1.7 below
USS CHICAGO	SSN-721			209°	4.3	6.1	3.4	1.7 below
USS PITTSBURGH	SSN-720			209°	4.2	6.1	3.4	1.7 below
USS KEY WEST	SSN 722			209°	4.2	6.1	3.4	1.7 below

TABLE FOUR

1. The masthead light(s) required by Rule 27(b)(iii) and the lights required by Rule 27(b)(i) for vessels restricted in their ability to maneuver will not be displayed simultaneously except for aircraft carrier types (CV, CVN, AVT, LPH and LHA). The lights required by Rule 27(b)(i) when exhibited will be so placed as to be above and clear of all other lights and obstructions. Ships conducting flight operations also may not display the stern light required by Rule 27(b)(iii).

2. The second masthead light required by Rule 23(a)(ii) and the lights and shapes required by Rules 24 and 27 are not displayed by submarines.

3. The second masthead light required by Rule 23(a)(ii) and the lights required by Rules 24, 27, and 30(d)(i) are not installed on submarines.

4. The lights required by Rule 27(b) are spaced 0.9 meters apart in lieu of the 2 meters specified in Annex I, section 2(i)(i) on the following ships:
USS ANTELOPE (PG 86)
USS READY (PG 87)

5. On mine warfare type ships the masthead lights will not always be above and clear of the minesweeping lights, as is required by Annex I, Section 2(f). The positions of the masthead lights with relation to the minesweeping lights are as follows:

Vessel	MSO No.	Relationship of forward masthead light to all minesweeping lights	Relationship of after masthead light to lower minesweeping lights	Relationship of after masthead light to upper minesweeping lights
USS CONSTANT	427	below	above	below
USS DASH	428	below	above	below
USS DETECTOR	429	below	above	below
USS DIRECT	430	below	above	below
USS DOMINANT	431	below	above	below
USS ENGAGE	433	below	above	below
USS ENHANCE	437	below	above	below
USS ESTEEM	438	below	same as	below
USS EXCEL	439	below	above	below
USS EXPLOIT	440	below	above	below
USS EXULTANT	441	below	above	below
USS FEARLESS	442	below	above	below
USS FIDELITY	443	below	above	below
USS FORTIFY	446	below	above	below
USS ILLUSIVE	448	below	above	below
USS IMPERVIOUS	449	below	above	below
USS IMPLICIT	455	below	lower than	below
USS INFLICT	456	below	above	below
USS PLUCK	464	below	above	below
USS CONQUEST	488	below	lower than	below
USS GALLANT	489	below	lower than	below
USS LEADER	490	below	above	below
USS PLEDGE	492	below	lower than	below
USS ADROIT	509	below	lower than	below
USS AFFRAY	511	below	same as	below
MSB	15	below	—	—
MSB	16	do	—	—
MSB	25	do	—	—
MSB	28	do	—	—
MSB	29	do	—	—
MSB	41	do	—	—
MSB	51	do	—	—
MSB	52	do	—	—

6. The masthead light required by Rule 23(a)(i) is not located in the forepart of the vessel on the following ships:
USS HIGH POINT (PCH 1)—0.6 meters aft of amidships
USS PEGASUS (PHM 1)—3.0 meters aft of amidships
USS HERCULES (PHM 2)—3.0 meters aft of amidships
USS TAURIS (PHM 3)—3.0 meters aft of amidships
USS AQUILA (PHM 4)—3.0 meters aft of amidships
USS ARIES (PHM 5)—3.0 meters aft of amidships
USS GEMINI (PHM 6)—3.0 meters aft of amidships

7. The arc of visibility of the after masthead light required by Rule 23(a)(ii) and Annex I, section 2(f) may be obstructed from right ahead on certain naval ships as follows:

USS SHENANDOAH (AD 26)	1° 0′	USS WABASH (AOR 5)	1° 13′
USS BRYCE CANYON (AD 27)	1° 0′	USS KALAMAZOO (AOR 6)	1° 13′
USS WICHITA (AOR 1)	1° 13′	USS FULTON (AS 11)	1° 0′
USS KANSAS CITY (AOR 3)	1° 13′	USS HUNLEY (AS 31)	2° 10′
USS SAVANNAH (AOR 4)	1° 13′	USS HOLLAND (AS 32)	3° 46′

USS KIDD (DDG 993)	0° 28.8′
USS CALLAGHAN (DDG 994)	0° 28.8′
USS SCOTT (DDG 995)	0° 28.8′
USS CHANDLER (DDG 996)	0° 28.8′

8. On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head.

USS OLIVER HAZARD PERRY	FFG 7
USS MCINERNEY	FFG 8
USS WADSWORTH	FFG 9
USS DUNCAN	FFG 10
USS CLARK	FFG 11
USS GEORGE PHILIP	FFG 12
USS SAMUEL ELIOT MORISON	FFG 13
USS SIDES	FFG 14
USS ESTOCIN	FFG 15
USS CLIFTON SPRAGUE	FFG 16
USS ANTRIM	FFG 20
USS FAHRION	FFG 22
USS LEWIS B. FULLER	FFG 23
USS JACK WILLIAMS	FFG 24
USS COPELAND	FFG 25
USS GALLERY	FFG 26
USS MAHLON S. TISDALE	FFG 27
USS BOONE	FFG 28
USS STEPHEN W. GROVES	FFG 29
USS REID	FFG 30
USS STARK	FFG 31
USS JOHN L. HALL	FFG 32
USS JARRETT	FFG 33
USS AUBREY FITCH	FFG 34
USS UNDERWOOD	FFG 36
USS CROMMELIN	FFG 37
USS CURTS	FFG 38
USS DOYLE	FFG 39
USS HALYBURTON	FFG 40
USS MCCLUSKY	FFG 41
USS KLAKRING	FFG 42
USS THACH	FFG 43
USS DEWERT	FFG 45
USS RENTZ	FFG 46
USS NICHOLAS	FFG 47
USS VANDERGRIFT	FFG 48
USS ROBERT G. BRADLEY	FFG 49
USS TAYLOR	FFG 50
USS GARY	FFG 51
USS CARR	FFG-52
USS HAWES	FFG-53
USS FORD	FFG 54
USS ELROD	FFG-55
USS SIMPSON	FFG-56
USS CLIFTON SPRAGUE	FFG-16
USS JOHN A. MORRE	FFG-19
USS ANTRIM	FFG 20
USS FLATLEY	FFG 21
USS REUBEN JAMES	FFG-57
USS SAMUEL B. ROBERTS	FFG-58

9. Sidelights on the following ships do not comply with Annex 1, Section 3(b):

Vessel	Number	Distance of sidelights forward of masthead light in meters
USS OLIVER HAZARD PERRY	FFG 7	2.75
USS MCINERNEY	FFG 8	2.75
USS WADSWORTH	FFG 9	2.75
USS DUNCAN	FFG 10	2.75
USS CLARK	FFG 11	2.75
USS GEORGE PHILIP.	FFG 12	2.75
USS SAMUEL ELIOT MORISON.	FFG 13	2.75
USS SIDES	FFG 14	2.75
USS ESTOCIN	FFG 15	2.75
USS CLIFTON SPRAGUE.	FFG 16	2.75
USS ANTRIM	FFG 20	2.75
USS FAHRION	FFG 22	2.69
USS LEWIS B. FULLER.	FFG 23	2.75
USS JACK WILLIAMS.	FFG 24	2.75
USS COPELAND	FFG 25	2.75
USS GALLERY	FFG 26	2.75
USS MAHLON S. TISDALE.	FFG 27	2.75
USS BOONE	FFG 28	2.75
USS STEPHEN W. GROVES.	FFG 29	2.75
USS REID	FFG 30	2.75
USS STARK	FFG 31	2.75
USS JOHN L. HALL	FFG 32	2.75
USS JARRETT	FFG 33	2.69
USS AUBREY FITCH	FFG 34	2.75
USS UNDERWOOD	FFG 36	2.75
USS CROMMELIN	FFG 37	2.75
USS CURTS	FFG 38	2.75
USS DOYLE	FFG 39	2.75
USS HALYBURTON	FFG 40	2.75
USS MCCLUSKY	FFG 41	2.75
USS KLAKRING	FFG 42	2.75
USS THACH	FFG 43	2.75
USS DEWERT	FFG 45	2.75
USS RENTZ	FFG 46	2.75
USS NICHOLAS	FFG 47	2.75
USS VANDERGRIFT	FFG 48	2.75
USS ROBERT G. BRADLEY.	FFG 49	2.75
USS TAYLOR	FFG 50	2.75
USS GARY	FFG 51	2.75
USS CARR	FFG 52	2.75
USS HAWES	FFG 53	2.75
USS FORD	FFG 54	2.75
USS ELROD	FFG 55	2.75
USS SIMPSON	FFG 56	2.75
USS CLIFTON SPRAGUE.	FFG-16	2.75
USS JOHN A. MORRE.	FFG-19	2.75
USS ANTRIM	FFG 20	2.75
USS FLATLEY	FFG 21	2.75

Vessel	Number	Distance of sidelights forward of masthead light in meters
USS REUBEN JAMES.	FFG-57	2.75
USS SAMUEL B. [illegible]OBERTS.	FFG-58	2.75

10. On USNS POWHATAN (T-ATF 166), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

11. On USNS NARRAGENSETT T-ATF 167, the masthead lights used for towing required by Rule 24 will be displayed approximately 4.95 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

12. On USNS CATAWBA (T-ATF 168), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

13. On USNS NAVAJO (T-ATF 169), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

14. On LCAC-class amphibious vessels, full compliance with Rules 21(a), 21(b), and 22(b), and Annex I, section 2(a)(i), 72 COLREGS, cannot be obtained. Tables One and Two of section 706.2 provide the dimensions of closest possible compliance of LCAC-class amphibious vessels with the aforementioned rules. The following paragraph details the specific dimensions of closest possible compliance and the basis for certification by the Secretary of the Navy that full compliance with the aforementioned rules is not obtainable.

In LCAC-class amphibious vessels, there are permanent and temporary masts. The permanent masthead light is located 5.26 meters athwartship to port of centerline 5.49 meters above the hull. The temporary masthead light is located 3.98 meters athwartship to starboard of centerline 4.06 meters above the hull. The temporary masthead light is displayed in lieu of the permanent masthead light only when LCAC-class amphibious vessels are operating with amphibious assault vessels. When operating in this mode, the sidelights are displayed at a height greater than three-quarters of the height of the temporary masthead light. The sidelights are located on top of the port and starboard deckhouses to permit the required unobstructed arcs of visibility and are 3.28 meters above the hull, resulting in a vertical separation between those lights and the temporary masthead light of 0.78 meters. Because of the minimal vertical separation between the sidelights and the temporary masthead light and the luminous intensity of the temporary light, the sidelights on these vessels may not be distinguishable by the naked eye at the 2-mile range required by Rule 22(b).

15. On USNS MOHAWK (T-ATF 170), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

16. On USNS SIOUX (T-ATF 171), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

17. On the following ships the arc of visibility of the after masthead light required by Rule 23(a)(ii) may be obstructed through 0°48.6′ arc of visibility at the point 349° relative to the ship's head:

USS KIDD (DDG 993)
USS CALLAGHAN (DDG 994)
USS SCOTT (DDG 995)
USS CHANDLER (DDG 996)

18. On USNS APACHE (T-ATF 172), the masthead lights used for towing required by Rule 24 will be displayed approximately 4.1 meters below the lowest of the lights required to be displayed by Rule 27 when a vessel is not under command or is restricted in its ability to maneuver.

19. On USS DOLPHIN (AGSS 555) the masthead light will be visible at a distance of 4.3 nautical miles and the sidelights will be visible at a distance of 2 nautical miles.

20. On USS PEGASUS (PHM 1); USS TAURUS (PHM 3); and USS AQUILA (PHM 4), two lights are installed at the same level, one fore and one aft, high on the mast to provide the closest possible compliance to the all-round anchor light visibility required by Rule 30(b) and Annex I, section 9(b).

21. On USS HERCULES (PHM 2), USS ARIES (PHS 5), and USS GEMINI (PHM 6), two lights are installed at the same level, one fore and one aft, high on the mast to provide the closest possible compliance to the all-round anchor light visibility required by Rule 30(b) and Annex I, section 9(b).

22. On the following ships, the arc of visibility of the forward masthead light, required by Rule 21(a), may be obstructed through 1.4° at the following angles relative to the ship's heading:

Vessel	Number	Obscured angles relative to ship's heading
USS DAHLGREND	DG 43	21.8° and 328.7°.
USS DANIELS	CG 27	017° and 343°.
USS BIDDLE	CG 34	017° and 343°.
USS FARRAGUT	DDG 37	19.5° and 340.5°.
USS RICHMOND K. TURNER.	CG 20	017° and 343°.

Table Five

Vessel	Number	Forward masthead light less than the required height above the hull. Annex I, sec. 2(a)(i))	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. 3(a)	Percentage horizontal separation attained
USS POINT LOMA.	CGS 2			X				X	61
USS LEAHY	CG 16	X		X			X	X	23
USS BELKNAP	CG 26			X			X	X	21
USS TICONDEROGA.	CG 47						X	X	38.3
USS YORKTOWN.	CG 48						X	X	38.0
USS VINCENNES.	CG–49						X	X	38
USS LONG BEACH.	CGN–9						X	X	13.5
USS CALIFORNIA.	CGN–36						X	X	26.2
USS SOUTH CAROLINA.	CGN–37						X	X	26.2
USS TEXAS	CGN–39						X	X	13.3
USS PAUL F. FOSTER.	DD–964						X	X	46.4
USS KINKAID	DD–965						X	X	46.4
USS HEWITT	DD–966						X	X	46.4
USS ELLIOT	DD–967					X	X	46.4	
USS PETERSON.	DD–969						X	X	46.4
USS ARTHUR W. RADFORD.	DD–968						X	X	46.4
USS CARON	DD–970					X	X	46.4	
USS DAVID R. RAY.	DD–971						X	X	46.4
USS OLDENDORF.	DD–972						X	X	46.4
USS COMTE DE GRASSE.	DD–974						X	X	46.4
USS BRISCOE	DD–977						X	X	46.4

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USS JOHN HANCOCK.	DD-981						X	X	46.4
USS NICHOLSON.	DD-982						X	X	46.4
USS HAYLER	DD 997						X	X	46.4
USS DAHLGREN.	DDG-43						X	X	24.0
USS KIDD	DDG993			X			X	X	44.6
USS CALLAGHAN.	DDG994			X			X	X	44.6
USS SCOTT	DDG995			X			X	X	44.6
USS CHANDLER.	DDG996			X			X	X	44.6
USS WHIDBEY ISLAND.	LSD-41						X	65.0	
USS GERMANTOWN.	LSD-42							X	65
USNS KILAUEA.	TAE 26						X		94.1
USS CONOLLY.	DD-979						X	x	46.4
USS VALLEY-FORGE.	CG-50						X	X	38
USS JOHN RODGERS.	DD-983						X	X	46.4
USS FARRAGUT.	DDG-37						X	X	23.2
USS SAN JOSE.	AFS 7							X	98.1
USS SAN DIEGO.	AFS 6							X	97.5
USS O'BRIEN	DD-975						X	X	46.1
USS NIAGARA FALLS.	AFS 3							X	97.9
USS BUNKER HILL.	CG-52						X	X	38
USS HALSEY	CG-23						X	X	29
USS ENGLAND.	CC 22						X	X	30
USS HARRY E. YARNELL.	CG-17						X	X	29
USS JOSEPHUS DANIELS.	CG-27						X	X	30

Table Five—Continued

Vessel	Number	Forward masthead light less than the required height above the hull. Annex I, sec. 2(a)(i))	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex 1, sec. 3(a)	Percentage horizontal separation attained
USS WAINWRIGHT.	CG-28						X	X	31
USS WILLIAM H. STANDLEY.	CG-32						X	X	31
USS KISKA	AE 35							X	98.9
USS BELKNAP	CC 26						X	X	30
USS HORNE	CG 30						X	X	30
USS SURIBACHI.	AE 21							X	87
USS VIRGINIA	CGN 38						X	X	13.9
USS CONCORD.	AFS 5							X	97
USS WORDEN	CG 18						X	X	28
USS MOBILE BAY.	CC 53						X	X	38
USS FORT McHENRY.	LSD 43							X	64
USS TRUXTON.	CGN 35						X	X	21
USS ELK RIVER.	IX 501							X	18.4
USS LEAHY	CG-16	X					X	X	30
USS MOUNT WHITNEY.	LCC 20							X	69.7
USS RICHMOND K. TURNER.	CG 20						X	X	29

[42 FR 36434, July 14, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 706.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

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§ 706.3 Exemptions by the Secretary of the Navy under Executive Order 11964.

The Secretary of the Navy hereby exempts, in accordance with Rule 38 of the International Regulations for Preventing Collisions at Sea, 1972, the vessels and classes of vessels listed in this section, from full compliance with the Regulations, where an exemption is allowed by, and for the periods specified in, Rule 38. The Secretary of the Navy further finds that the vessels and classes of vessels listed have had their keels laid or are in corresponding stages of construction before July 15, 1977, and that such vessels and classes of vessels comply with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

Table One

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years, Rule 38(f)	Sound Signal Appliances in Annex III, 9 years; Rule 38(g)
USNS KINGSPORT (T-AG164)	X	X	X				X
USNS WHEELING (T-AGM 8)	X	X	X				X
USNS ARNOLD (T-AGM 9)	X	X					X
USNS VANDENBURG (T-AGM 10)	X	X					X
USNS VANGUARD (T-AGM 19)	X	X					X
USNS REDSTONE (T-AGM 20)	X	X					X
USNS RANGE SENTINEL (T-AGM 22)	X	X	X				X
USNS LYNCH (T-AGOR 7)	X	X	X				X
USNS MIZAR (T-AGOR 11)	X	X	X				X
USNS DE STEIGUER (T-AGOR 12)	X	X	X				X
USNS BARTLETT (T-AGOR 13)	X	X	X				X
USNS HAYES (T-AGOR 16)	X	X	X				X
USNS BOWDITCH (T-AGS 21)	X	X	X				X
USNS DUTTON (T-AGS 22)	X	X	X				X
USNS SILAS BENT (T-AGS 26)	X	X	X				X
USNS KANE (T-AGS 27)	X	X	X				X
USNS CHAUVENET (T-AGS 29)	X	X	X				X
USNS HARKNESS (T-AGS 32)	X	X	X				X
USNS WILKES (T-AGS 33)	X	X	X				X
USNS WYMAN (T-AGS 34)	X	X	X				X
USNS HESS (T-AGS 38)	X	X					X
USNS BROSTROM (T-AK 255)	X	X		X			X
USNS TOWLE (T-AK 240)	X	X	X				X
USNS MIRFAK (T-AK 271)	X	X	X				X
USNS BLAND (T-AK 277)	X	X	X				X
USNS NORWALK (T-AK 279)	X	X	X				X
USNS FURMAN (T-AK 280)	X	X	X				X
USNS VICTORIA (T-AK 281)	X	X	X				X
USNS MARSHFIELD (T-AK 282)	X	X	X				X
USNS COMET (T-AKR 7)	X	X		X			X
USNS METEOR (T-AKR 9)	X	X		X			X
USNS UTE (T-ATF 76)	X	X	X				X
USNS LIPAN (T-ATF 85)	X	X	X				X
USNS ATAKAPA (T-ATF 149)	X	X	X				X
USNS MOSOPELEA (T-ATF 158)	X	X	X				X
USNS RIGEL (T-AF 58)	X	X		X			X
USNS MARIAS (T-AO 57)	X	X		X			X

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USNS TALUGA (T-AO 62)	X	X		X			X
USNS MISPILLION (T-AO 105)	X	X		X			X
USNS NAVASOTA (T-AO 106)	X	X		X			X
USNS PASSUMPSIC (T-AO 107)	X	X		X			X
USNS PAWCATUCK (T-AO 108)	X	X		X			X
USNS WACCAMAW (T-AO 109)	X	X		X			X
USNS MISSISSINEWA (T-AO 144)	X	X		X			X
USNS MAUMEE (T-AO 149)	X	X		X			X
USNS SHOSHONE (T-AO 151)	X	X		X			X
USNS YUKON (T-AO 152)	X	X		X			X
USNS AMERICAN EXPLORER (T-AO 165)	X	X				X	X
SEALIFT CLASS (T-AO 168-176)	X	X				X	X
USNS POTOMAC (T-AO 181)	X	X					X
COLUMBIA CLASS (T-AO 182-185)	X	X					X
USNS RINCON (T-AOG77)	X	X	X				X
USNS NODAWAY (T-AOG 78)	X	X	X				X
USNS PETALUMA (T-AOG 79)	X	X	X				X
USNS NEPTUNE (T-ARC 2)	X	X	X				X
USNS AEOLUS (T-ARC 3)	X	X	X				X
USNS MYER (T-ARC 6)	X	X	X				X
T-ATF 166 class	X	X		X		X	
CV-41 Class	X	X		X		X	
CV-59 Class	X	X		X		X	
CV-63 Class	X	X		X		X	
SSBN-627 Class	X	X	X		X	X	
SSBN-640 Class	X	X	X		X	X	
SSBN-726	X	X	X				
SS-563 Class	X	X	X		X	X	
SS-572 Class	X	X	X		X	X	
USS GRAYBACK (SS-574)	X	X	X		X	X	
SS-580 Class	X	X	X		X	X	
USS NAUTILUS (SSN-571)	X	X	X		X	X	
USS SEAWOLF (SSN-575)	X	X	X		X	X	
SSN-578 Class	X	X	X		X	X	
SSN-585 Class	X	X	X		X	X	
SSN-594 Class	X	X	X		X	X	
USS TULLIBEE (SSN-597)	X	X	X		X	X	
SSN-637 Class	X	X	X		X	X	
USS NARWHAL (SSN-671)	X	X	X		X	X	
USS GLENARD P LIPSCOMB (SSN-685)	X	X	X		X	X	
SSN-688 Class	X	X	X		X	X	
LCC-19 Class	X	X		X	X	X	
LHA-1 Class	X	X		X	X	X	
USS JOHN F KENNEDY (CV-67)	X	X		X	X		
USS ENTERPRISE (CVN-65)	X	X		X	X		
CVN-68 Class	X	X		X	X		

Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances in Annex III, 9 years; Rule 33(g)
USS LEXINGTON (CVT-16)	X	X		X	X		
USS OKLAHOMA CITY (CG-5)	X	X		X	X	X	
CG-10 Class	X	X		X	X		
CG-16 Class	X	X		X	X	X	
CG-26 Class	X	X		X	X	X	
USS LONG BEACH (CGN-9)	X	X		X	X		
USS BAINBRIDGE (CGN-25)	X	X		X	X	X	
USS TRUXTUN (CGN-35)		X		X	X		
CGN-36 Class	X	X		X	X	X	
CGN-38 Class	X	X		X	X		
DD-710 Class	X	X	X		X		
DD-931 Class	X	X	X		X		
DD-933 Class	X	X	X		X		
DD-945 Class	X	X	X		X		
DD-963 Class	X	X		X	X	X	
DDG-2 Class	X	X	X		X		
DDG-31 Class	X	X	X		X		
DDG-35 Class	X	X		X	X	X	
DDG-37 Class	X	X	X	X	X	X	
FF-1040 Class	X	X	X		X		
FF-1052 Class	X	X	X		X		
FFG-1 Class	X	X	X		X	X	
USS OLIVER HAZARD PERRY (FFG-7)	X	X	X		X		
SSBN-598 Class	X	X	X		X	X	
SSBN-608 Class	X	X	X		X	X	
SSBN-616 Class	X	X	X		X	X	
USS TULARE (LKA-112)	X	X		X			X
USS CHARLESTON (LKA-113)	X	X		X			X
USS PAUL REVERE (LPA-248)	X	X		X			X
USS FRANCIS MARION (LPA-249)	X	X		X			X
LPD-1 Class	X	X		X		X	
LPD-4 Class	X	X		X		X	X
LPH-2 Class	X	X		X		X	X
LSD-28 Class	X	X		X	X	X	
LSD-36 Class	X	X		X	X	X	X
LST-1179 Class	X	X		X		X	X
MSO-422 Class	X	X	X			X	X

MSO-428 Class	X	X	X			X	X
MSO-508 Class	X	X	X			X	X
PG-84 Class	X	X	X				X
PG-92 Class	X	X	X				X
AE-21 Class	X	X		X			X
AE-23 Class	X	X		X			X
AE-26 Class	X	X		X			X
AFS-1 Class	X	X		X			X
AO-51 Class	X	X		X	X		X
AO-143 Class	X	X		X	X		X
AOE-1 Class	X	X		X	X	X	X
AOR-1 Class	X	X		X		X	X
AD-14 Class	X	X		X		X	X
AD-26 Class	X	X		X			X
AD-37 Class	X	X		X			X
AD-41 Class	X	X					
USS COMPASS ISLAND (AG-153)	X	X		X			X
AG-520 Class	X	X	X				X
USS POINT LOMA (AGDS-2)	X	X		X	X	X	X
USS PLAINVIEW (AGEH-1)	X	X	X			X	X
USS LA SALLE (AGF-3)	X	X		X	X	X	
USS GLOVER (AGFF-1)	X	X	X			X	
USS DOLPHIN (AGSS-555)	X	X	X			X	X
USS TANG (AGSS-563)	X	X	X			X	X
AR-5 Class	X	X		X		X	X
AR-28 Class	X	X		X			X
ARS-6 Class	X	X	X				X
ARS-38 Class	X	X	X				X
AS-11 Class	X	X		X		X	X
USS PROTEUS (AS-19)	X	X		X		X	X
AS-31 Class	X	X		X		X	X
AS-33 Class	X	X		X		X	X
AS-36 Class	X	X		X		X	X
ASR-7 Class	X	X	X				X
ASR-21 Class	X	X	X				X
ATF-81 Class	X	X	X				X
ATF-96 Class	X	X	X				X
AFT-148 Class	X	X	X				X
ATS-1 Class	X	X	X				X
USS NORTON SOUND (AVM-1)	X	X		X	X		X
AS-39 Class	X	X					X
LCU-1610 Class		X	X			X	X
LCU-1648 Class		X	X			X	X
YFU (Ex-LCU-1466 Class)		X	X			X	X
DD-825 Class	X	X	X			X	
DD-948 Class	X	X	X			X	
FF-1037 Class	X	X	X			X	

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Table One—Continued

VESSEL OR CLASS	Lights with ranges in Rule 22, 4 years; Rule 38(a)	Lights with color specs in § 7, Annex I, 4 years; Rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), Annex I, permanent; Rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), Annex I, 9 years; Rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), Annex I, 9 years; Rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), Annex I, 9 years; Rule 38(f)	Sound Signal Appliances in Annex III, 9 years; Rule 38(g)
MSB Class	X	X				X	X

[42 FR 36434, July 14, 1977, as amended at 42 FR 48876, Sept. 26, 1977; 43 FR 33710, Aug. 1, 1978; 43 FR 49536, Oct. 24, 1978; 44 FR 24287, Apr. 25, 1979; 45 FR 32672, May 19, 1980]

PART 707—SPECIAL RULES WITH RESPECT TO ADDITIONAL STATION AND SIGNAL LIGHTS

Sec.

707.1 Purpose of regulations.
707.2 Man overboard lights.
707.3 Yard arm signaling lights.
707.4 Aircraft warning lights.
707.5 Underway replenishment contour lights.
707.6 Minesweeping station keeping lights.
707.7 Submarine identification light.
707.8 Special operations lights.
707.9 Convoy operations stern light.
707.10 Wake illumination light.
707.11 Flight operations lights.
707.12 Amphibious operations lights.

AUTHORITY: 33 U.S.C. 182 and 1606, E.O. 11964.

SOURCE: 42 FR 61596, Dec. 6, 1977, unless otherwise noted.

§ 707.1 Purpose of regulations.

All ships are warned that when U.S. naval vessels are met in international and inland waters, some of the navigational lights displayed by them may be special lights for naval purposes. When used, they may be displayed simultaneously with the ordinary navigational lights required by the International Regulations for Preventing Collisions at Sea, 1972, or the Inland Navigational Rules. The lights are located and characterized in such a fashion that, as far as possible, they cannot be mistaken for any light authorized by either set of rules. This part publishes the special rules with respect to these additional station and signal lights promulgated by the Secretary of the Navy for vessels of the Navy.

§ 707.2 Man overboard lights.

Naval vessels may display, as a means of indicating man overboard, two pulsating, all round red lights in the vertical line located on a mast from where they can best be seen.

§ 707.3 Yard arm signaling lights.

Naval vessels may display, as a means of visual signaling, white all round lights at the ends of the yard arms. These lights will flash in varying sequences to convey the intended signal.

§ 707.4 Aircraft warning lights.

Naval vessels may display, as a means of indicating the presence of an obstruction to low flying aircraft, one all round red light on each obstruction.

§ 707.5 Underway replenishment contour lights.

Naval vessels may display, as a means of outlining the contour of the delivery ship during nighttime underway replenishment operations, either red or blue lights at delivery-ship-deck-edge extremities.

[42 FR 61596, Dec. 6, 1977, as amended at 44 FR 27991, May 14, 1979]

§ 707.6 Minesweeping station keeping lights.

Naval vessels engaged in minesweeping operations may display, as an aid in maintaining prescribed intervals and bearings, two white lights in a vertical line visible from 070° through 290° relative.

§ 707.7 Submarine identification light.

Submarines may display, as a distinctive means of identification, an intermittent flashing amber beacon with a sequence of operation of one flash per second for three (3) seconds followed by a three (3) second off-period. The light will be located where it can best be seen, as near as practicable, all around the horizon. It shall not be located less than two (2) feet above or below the masthead lights.

[48 FR 4284, Jan. 31, 1983]

§ 707.8 Special operations lights.

Naval vessels may dispay, as a means of coordinating certain special operations, a revolving beam colored red, green, or amber, located on either yard arm or the mast platform from where it can best be seen all around the horizon.

§ 707.9 Convoy operations stern light.

Naval vessels may display, during periods of convoy operations, a blue light located near the stern with the same characteristics as, but in lieu of, the normal white stern light.

§ 707.10 Wake illumination light.

Naval vessels may display a white spot light located near the stern to illuminate the wake.

§ 707.11 Flight operations lights.

Naval vessels engaged in night flight operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of aircraft and enhancing flight safety. These light systems will be located at various points on the vessels, depending on the vessel type and the nature of the flight operations being conducted.

§ 707.12 Amphibious operations lights.

Naval vessels engaged in night amphibious operations may display various arrangements of light systems containing combinations of different colored lights as a means of assisting in the launch and recovery of assault craft and enhancing the safety of the amphibious operation. These light systems will be located at various points on the vessel, depending on the vessel type and the nature of the amphibious operations being conducted.

SUBCHAPTER C—PERSONNEL

PART 716—DEATH GRATUITY

Subpart A—Provisions Applicable to the Navy and the Marine Corps

Sec.
716.1 Principal rule.
716.2 Definitions.
716.3 Special situations.
716.4 Eligible survivors.
716.5 Delegation of authority.
716.6 Death occurring after active service.
716.7 Payment of the death gratuity.
716.8 Payments excluded.
716.9 Erroneous payment.

Subpart B—Provisions Applicable to the Navy

716.10 Procedures.

Subpart C—Provisions Applicable to the Marine Corps

716.11 Procedures.

AUTHORITY: Sec. 301, 80 Stat. 379, 1(32)(A), 72 Stat. 1452; 5 U.S.C. 301 10 U.S.C. 1475-1480, Pub. L. 89-554.

SOURCE: 24 FR 7523, Sept. 18, 1959, unless otherwise noted.

Subpart A—Provisions Applicable to the Navy and the Marine Corps

§ 716.1 Principal rule.

Under Title 10, U.S. Code, section 1475, the Secretary of the Navy shall have a death gratuity paid immediately upon official notification of the death of a member of the naval service who dies while on active duty, active duty for training, or inactive duty training. The death gratuity shall equal six months' basic pay (plus special, incentive, and proficiency pay) at the rate to which the deceased member was entitled on the date of his death but shall not be less than $800 nor more than $3,000. A kind of special pay included is the 25% increase in pay to which a member serving on a naval vessel in foreign waters is entitled under 10 U.S.C. 5540 when retained beyond expiration of enlistment because such retention was essential to the public interest.

§ 716.2 Definitions.

For the purposes of this part, terms are defined as follows:

(a) *Member of the naval service.* This term includes:

(1) A person appointed, enlisted, or inducted into the Regular Navy, Regular Marine Corps, Naval Reserve or Marine Corps Reserve, and includes a midshipman at the United States Naval Academy;

(2) Enlisted members of the Fleet Reserve and Fleet Marine Corps Reserve and retired members;

(3) A member of the Naval Reserve Officers Training Corps when ordered to annual training duty for 14 days or more, and while performing authorized travel to and from that duty; and

(4) Any person while en route to or from, or at a place for final acceptance for entry upon active duty in the naval service who has been ordered or directed to go to that place, and who has been provisionally accepted for such duty.

(b) *Active duty.* This term is defined as (1) full-time duty performed by a member of the naval service, other than active duty for training, or (2) as a midshipman at the United States Naval Academy, and (3) authorized travel to or from such duty or service.

(c) *Active duty for training.* Such term means:

(1) Full-time duty performed by a member of a Reserve component of the naval service for training purposes;

(2) Annual training duty performed for a period of 14 days or more by a member of the Naval Reserve Officers Training Corps; and

(3) Authorized travel to or from such duty.

(d) *Inactive-duty training.* Such term is defined as any of the training, instruction, appropriate duties, or equivalent training, instruction, duty, appropriate duties, or hazardous duty performed with or without compensation by a member of a Reserve component prescribed by the Secretary of the Navy pursuant to sections 206, 309, and 1002 of title 37, U.S. Code or any other provision of law. The term does not include:

(1) Work or study performed by a member of a Reserve component in connection with correspondence courses in which he is enrolled, or

(2) Attendance at an educational institution in an inactive status under the sponsorship of the Navy or Marine Corps.

[24 FR 7523, Sept. 16, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

§ 716.3 Special situations.

(a) *Service without pay.* Any member of a Reserve component who performs active duty, active duty for training, or inactive-duty training without pay shall, for purposes of a death gratuity payment, be considered as being entitled to basic pay, including special pay and incentive pay if appropriate, while performing such duties.

(b) *Death occurring while traveling to and from active duty for training and inactive-duty training.* Any member of a Reserve component who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive-duty training and who dies from an injury incurred on or after January 1, 1957 while proceeding directly to or directly from such active duty for training or inactive-duty training, shall be deemed to have been on active duty for training or inactive-duty training as the case may be.

(c) *Hospitalization.* A member of a Reserve component who suffers disability while on active duty, active duty for training, or inactive-duty training, and who is placed in a new status while he is receiving hospitalization or medical care (including outpatient care) for such disability, shall be deemed, for purposes of death gratuity payment to have continued on active duty, active duty for training, or inactive-duty training, as the case may be, in the event of his death in such status.

(d) *Discharge or release from a period of active duty.* A person who is discharged or released from active duty (other than for training) is considered to continue on that duty during the period of time required for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[24 FR 7523, Sept. 18, 1959, as amended at 25 FR 7792, Aug. 16, 1960]

§ 716.4 Eligible survivors.

(a) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member first listed below:

(1) The lawful spouse. (For purpose of this part, a man or woman shall be considered to be the spouse if legally married to the member at the time of the member's death.)

(2) His children (without regard to their age or marital status) in equal shares.

(3) Parent(s), brother(s) or sister(s) or any combination of them, when designated by the deceased member.

(4) Undesignated parents in equal shares.

(5) Undesignated brothers and sisters in equal shares.

In paragraphs (a) (2), (3) and (4), respectively, of this section, the terms "child" and "parent" have the meanings assigned to them by Title 10, U.S. Code section 1477 and the term "parents" includes persons in loco parentis as indicated by that section. The terms "brother" and "sister" in paragraphs (a) (3) and (5) of this section include brothers and sisters of the half blood and those through adoption.

(b) *Designation of payee by service member.* Where the service member has designated a beneficiary and is not survived by a spouse, child, or children, the payment will be made to the specific person designated by him provided the designee falls within the class of beneficiaries permitted as set forth in paragraph (a)(3) of this section. If more than one person is so designated on the Record of Emergency, payment will be made in equal shares unless the member designated a proportionate share to each beneficiary. Frivolous designations, such as one per centum to a particular beneficiary, should not be made.

(c) *Death of survivor prior to receipt of gratuity.* (1) If a survivor dies before receiving payment, or if a designated beneficiary predeceases the member (and there is no other designated beneficiary) such amount shall be paid to the then living survivor or survivors listed first under paragraph (a) of this section.

(2) In case one of the beneficiaries (parents or brothers or sisters) designated by a member, pursuant to paragraph (a)(3) of this section, to receive death gratuity payment dies prior to the member's death, or after his death but prior to the time payment is made, the share which would have been paid to the deceased designee may be paid to the other person or persons designated.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972]

§ 716.5 Delegation of authority.

(a) Pursuant to the authority contained in Title 10, U.S. Code, section 1479, as to deaths described in section 1475 thereof, the Secretary of the Navy has delegated to commanding officers of naval commands, installations, or districts, with respect to naval personnel, and to Marine Corps commanding generals and officers in command of regiments, battalions or equivalent units and of separate or detached commands who have custody of service records, with respect to Marine Corps personnel, authority to certify for the payment of death gratuity the lawful spouse or designated beneficiary(ies) of the deceased service member who was residing with him at or near his place of duty at the time of his death, except in cases in which a doubt may exist as to the identity of the legal beneficiary. Disbursing officers are authorized to make payment of the death gratuity upon receipt of certification from the Commanding Officer.

(b) The Secretary of the Navy has delegated authority to the Chief of Naval Personnel as to naval personnel, and to the Commandant of the Marine Corps (Code MSPA-1) as to Marine Corps personnel, the authority to certify the beneficiary(ies) for receipt of payment of death gratuity in all appropriate cases of payment of death gratuity under the Servicemen's and Veterans' Survivor Benefits Act (now reenacted in 10 U.S.C. 1475-1480), including, but not limited to:

(1) Cases in which a doubt may exist as to the identity of the legal beneficiary; and (2) cases in which the widow or designated beneficiary(ies) of the deceased service member was not residing with him at or near his place of duty at the time of his death.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

§ 716.6 Death occurring after active service.

(a) Under Title 10, U.S. Code, section 1476, the death gratuity will be paid in any case where a member or former member dies on or after January 1, 1957, during the 120-day period which begins on the day following the date of his discharge or release from active duty, active duty for training, on inactive duty training, if the Administrator of Veterans' Affairs determines that:

(1) The decedent was discharged or released, as the case may be, from the service under conditions other than dishonorable from the last period of the duty or training performed; and

(2) Death resulted from disease or injury incurred or aggravated while on such active duty or active duty for training; or while performing authorized travel to or from such duty; or

(3) Death resulted from injury incurred or aggravated while on such inactive-duty training or while traveling directly to or from such duty or training.

(b) For purposes of computing the amount of the death gratuity in such instances, the deceased person shall be deemed to be entitled on the date of his death to basic pay (plus any special, incentive and proficiency pay) at the rate to which he was entitled on the last day he performed such active duty, active duty for training, or inactive duty training. A kind of special pay included is a pay increase under 10 U.S.C. 5540; see § 716.1.

(c) The Department of the Navy is precluded from making payment of the death gratuity pending receipt of the determinations described in paragraph (a) of this section. In view of this, commands should insure that the medical records and reports of investigations by fact-finding bodies be submitted to the Navy Department at the earliest possible date. The Veterans' Administration is promptly notified of all deaths of this category reported, and upon the request of that agency all pertinent data is forwarded.

§ 716.7 Payment of the death gratuity.

(a) *Claim certification and voucher for the death gratuity payment.* The Comptroller General of the United States has approved DD Form 397 as the form to be used hereafter for claim certification and voucher for the death gratuity payment.

(b) *Active duty deaths (Navy).* To effect immediate payment of death gratuity the following actions will be taken:

(1) The commanding officer will ascertain that the deceased member died while on active duty, active duty for training, or inactive-duty training, and will obtain the name, relationship, and address of the eligible survivor from the Service Record of the deceased. The Dependency Application/Record of Emergency Data (NAVPERS 1070/602) or Record of Emergency Data (DD Form 93), will normally contain this information. In addition, in the case of enlisted personnel, the Application for Dependents Allowance (BAQ [Basic Allowance for Quarters]), NAVPERS Form 668, may serve as a source of corroboration. He will, with the cooperation of the disbursing officer, initiate preparation of a Claim Certification and Voucher for Death Gratuity Payment, DD Form 397, in original and five copies, completing blocks 5 through 14 inclusive, and the administrative statement in block 18. The administrative statement in block 18 will be signed by the commanding officer or acting commanding officer.

(2) The disbursing officer will, upon receipt of the DD Form 397, draw a check to the order of the eligible survivor named in block 5, complete blocks 2, 3, 4, and the check payment data portion of block 18.

(3) Under arrangements made by the commanding officer, the check and the original and one copy of the voucher, DD Form 397, will be delivered to the payee. The payee will be required to complete block 15, sign in block 17a, and have two witnesses complete block 17 on the original voucher at the time the check is delivered. Under no circumstances will the check be delivered to the payee until this action has been accomplished. The payee will retain the copy of the voucher, DD Form 397, and the signed original voucher will be returned by hand to the disbursing officer by the person designated to deliver the check.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

§ 716.8 Payments excluded.

(a) No payment shall be made if the deceased member suffered death as a result of lawful punishment for a crime or for a military or naval offense, except when death was so inflicted by any hostile force with which the Armed Forces of the United States have engaged in armed conflict.

(b) No payment will be made to a survivor implicated in the homicide of the deceased in the absence of evidence clearly absolving such survivor of any felonious intent.

(c) Unless the laws of the place where a minor beneficiary resides provide that such a payment would grant a valid acquittance of the Government's obligation to make a payment of death gratuity to or for a minor, a death gratuity of more than $1,000 may not be paid in whole or in part to a parent as natural guardian of a minor or to any other person who is not a legal guardian appointed by the civil court to manage the minor's financial affairs.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

§ 716.9 Erroneous payment.

Where through administrative mistake of fact or law, payment of the death gratuity is made to a person clearly not entitled thereto, and it is equally clear that another person is entitled to the death gratuity, the Chief of Naval Personnel (Pers-732) or the Commandant of the Marine Corps (Code MSPA-1), as appropriate, will certify payment to the proper payee, irrespective of recovery of the erroneous payment. On the other hand, where a payment of the death gratuity has been made to an individual on the basis of representations of record made by the deceased member as to his marital and dependency status, and the Government otherwise has no information which would give rise to doubt that such status is as represented, the payment is not to be regarded as "erroneous." The Government has a good acquittance in such cases even though it may subsequently develop that the payee is not the proper statutory payee of the gratuity and no second payment is authorized.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

Subpart B—Provisions Applicable to the Navy

§ 716.10 Procedures.

(a) *Action by commanding officers.* See § 716.7(b).

(1) *Immediate payment—Eligible beneficiary residing with deceased member.* Commanding officers, in order to expedite the payment of the death gratuity, will, upon official notification of death, ascertain the duty status of the deceased, and determine the eligibility of the spouse or designated beneficiary who was residing with the deceased member on or near his duty station at the time of his death. The services of a staff or district legal officer will be utilized as required. Every effort should be made to effect prompt payment (within 24 hours, if possible). It is the intent that determinations of entitlement by commands in the field will be confined largely to spouses and parents designated by the service member who were living with him at the time of his death.

(2) *Questionable cases.* If entitlement to the death gratuity payment is questionable after seeking advice of the staff or district legal officer, such case will be forwarded promptly to the Chief of Naval Personnel (Pers-732) with a brief statement relative to the facts which raised the issue of doubt. Every effort will be made to expedite action by a review of the official records of the decedent in the Bureau of Naval Personnel and the Family Allowance Activity at Cleveland, Ohio. Those cases wherein the service member was in a deserter status, absent without leave, or in the custody of civil authorities at the time of death, wherein guardianship must be provided for the protection of the decedent's children, or wherein a technicality exists which makes immediate certification legally unsound, will be considered questionable.

(3) *Exception.* Where the entitlement of the survivor who is living with the deceased at the time of his death is questionable and such survivor is in dire financial circumstances, the Chief of Naval Personnel (Pers-G23) shall be requested by message to make an adjudication of entitlement. If it is determined that the survivor is entitled to the payment, the commanding officer will be authorized by message to execute DD Form 397.

(b) *Action by Casualty Assistance Calls Program (CACP) officers; Potential beneficiary not residing with member*—(1) *Widow(er).* The CACP officer, on his or her initial visit to a widow(er), determines, propriety permitting, whether there is an urgent need for financial assistance. If there is an urgent need for financial assistance, the CACP officer should obtain DD Form 397 from any military disbursing office and, on his or her second visit to the widow(er), have him or her sign it and obtain the signatures of two witnesses on the form. It should be noted that the following procedure is confined to cases in which the decedent's eligible survivor for the death gratuity is a widow(er), and efforts to effect immediate payment in accordance with the intent of the governing statute are appropriate. In such cases, the CACP officer, upon learning that a widow(er), not residing with his or her spouse at or near the spouse's duty station, is in urgent need of financial assistance, shall advise the Chief of Naval Personnel (Pers-732) of the need by message. The CACP officer shall send a copy of this message to the decedent's duty station, if known. Upon receipt, the disbursing officer will furnish the Navy Finance

Center, Cleveland, Ohio 44199, with the decedent's basic monthly pay [plus any special (see § 716.1), incentive, and proficiency pay] in the event the pay account has not been forwarded previously to that center sufficiently early to have reached there. The CACP officer shall also send a copy of his message to the Navy Finance Center with the request that payment of the death gratuity be made upon receipt of the certification of beneficiary entitlement from the Chief of Naval Personnel (Pers-732).

(2) *Navy Relief.* In cases where there is immediate need prior to receipt of the death gratuity, the Navy Relief Society will be contacted by the Casualty Assistance Calls Program officer.

(c) *Action by the Chief of Naval Personnel.* (1) In all cases where death gratuity is not authorized to be paid locally and in cases where authority exists to pay locally but entitlement is questionable (see paragraph (a)(2) of this section), the Chief of Naval Personnel (Pers-732) will expedite adjudication of claims. As indicated in paragraph (b)(1) of this section CACP officers will refer cases of urgent financial need to the Chief of Naval Personnel (Pers-732) by message for action.

(2) If a minor is entitled to a death gratuity under 10 U.S.C. 1477 not exceeding $1,000, such death gratuity may be paid to the father or mother as natural guardian on behalf of the minor, provided a legally appointed guardian has not been appointed, upon substantiation by a sworn (notarized) statement of the natural guardian:

(i) That no legal guardian has been appointed and that such an appointment is not contemplated;

(ii) The relationship of the natural guardian to the minor;

(iii) That the minor is in the actual custody of the natural guardian;

(iv) That an amount paid to the natural guardian will be held for, or applied to, the use and benefit of the minor.

If the death gratuity to which a minor is entitled exceeds $1,000, the appointment of a legal guardian on behalf of the minor is requested. Certification of the minor eligible to receive the death gratuity is made by the Chief of Naval Personnel (Pers-732) and payment is effected by the Navy Finance Center, Cleveland, Ohio 44199;

(d) *Cross-servicing procedure.* Payment of the death gratuity may be made by a disbursing officer who is maintaining the pay record of a member of another service, provided the command to which the member is attached and which maintains his service record is in the immediate vicinity and certificates the beneficiary eligible to receive payment on the proper voucher (DD Form 397). Otherwise the pay record will be sent to the Army Finance Center, Air Force Finance Center, Commandant of the Marine Corps (Code CDB), the Navy Finance Center, of the Commandant, U.S. Coast Guard, as appropriate.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979; 45 FR 43165, June 26, 1980]

Subpart C—Provisions Applicable to the Marine Corps

§ 716.11 Procedures.

(a) *Action.* Commanding officers will direct immediate payment of the gratuity where the deceased member's spouse was, in fact, residing with the member on or near the station of duty at the time of the member's death while on active duty, active duty for training, or inactive-duty training. Every effort should be made to effect such payment promptly (within 24 hours, if possible). In cases where the eligible survivor residing with the member on or near the duty station is other than a spouse, commanding officers may direct the payment of death gratuity when the case can be properly determined, and an urgent need exists for immediate payment. Proper determination is imperative.

(b) *Qualifications.* (1) Where any doubt exists as to the legal recipient of the gratuity, the case will be referred to the Commandant of the Marine Corps (Code MSPA-1) for determination.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25648, May 2, 1979]

PART 718—MISSING PERSONS ACT

Sec.
718.1 General provisions.
718.2 Allotments.
718.3 Transportation of dependents.
718.4 Delegations.

§ 718.1 General provisions.

(a) Under the provisions of the Missing Persons Act, as amended, a finding of presumptive death is made by the Secretary of the Navy when a survey of all available sources of information indicates beyond doubt that the presumption of continuance of life has been overcome. When a finding of presumptive death is made, a man's pay accounts are closed as of the day following the expiration of the 12 months' absence or a longer period when justified, and the various benefits, such as the six months' gratuity, become payable. A finding of presumptive death concerning an officer or enlisted man of the Navy means simply that as of the date thereof he is for the purposes of Navai administration no longer alive. It does not mean that death occurred on that or on any other certain date.

(b) Findings of presumptive death are never made when the "missing" status has not continued for at least 12 months. Whenever, subsequent to the expiration of the 12th month, cumulative or other evidence establishes by its preponderance that a "missing" person is no longer alive, a prompt finding of presumptive death will be made. Also, such a finding will be made whenever justified by the lapse of time beyond the 12 months' absence without specific information being received.

(c) The Secretary of the Navy, or such subordinate as he may designate, has authority to make all determinations necessary in the administration of the act, and for the purposes of the act determinations so made shall be conclusive as to death or finding or death, as to any other status dealt with by the act, and as to any essential date including that upon which evidence or information is received in the Department. The determination of the Secretary of the Navy, or of such subordinate as he may designate, is conclusive as to whether information received concerning any person is to be construed and acted upon as an official report of death. When any information deemed to establish conclusively the death of any person is received in the department, action shall be taken thereon as an official report of death, notwithstanding any prior action relating to death or other status of such person. Under the foregoing provisions a determination of death is made prior to the expiration of 12 months when the evidence received is considered to establish conclusively the fact of death and settlement of accounts is made to the date established as the date of receipt of evidence on which the fact of death is established.

(Sec. 301, 80 Stat. 379; 5 U.S.C. 301. Interpret or apply 80 Stat. 112-117, 248-254; 5 U.S.C. 5561-5568, 37 U.S.C. 551-558)

[17 FR 5390, June 14, 1952]

§ 718.2 Allotments.

During such period as a person is in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, allotments from his pay and allowances may be initiated, continued, discontinued, increased, decreased, suspended or resumed in behalf of his dependents and for such other purposes as are justified by the circumstances and are in the interests of the person or of the Government.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015)

[26 FR 12658, Dec. 29, 1961]

§ 718.3 Transportation of dependents.

(a) Whenever a person in active service is officially reported as dead, injured, (Only when the anticipated period of hospitalization or treatment is expected to be of prolonged duration as shown by a statement of the commanding officer at the receiving hospital), missing for a period of 29 days or more, interned in a foreign country, or captured by a hostile force, his dependents, household and personal effects including one privately owned motor vehicle may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with the provisions of paragraph (d) of this section; or, upon application by such dependent, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section, or upon the person's application if injured, to such location as may have been determined in advance or as may be subsequently approved, except that a reasonable relationship must exist between the condition and circumstances of the dependents and the destination to which transportation is requested. In the case of a person in an injured status, transportation of his dependents or household and personal effects may be authorized only when the hospitalization or treatment of the injured person will be of prolonged duration. Payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of the travel for which transportation in kind is not furnished, may be authorized, when such travel has been completed.

(b) When the Secretary of the Navy or his designee determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts.

(c) The Secretary of the Navy or his designee is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, will be charged against appropriations currently available.

(d) The following provisions apply to the determination of the "other person" or persons referred to in paragraphs (a) and (b) of this section who may receive the effects or proceeds.

(1) If no duly appointed legal representative of the owner of the personal effects makes demand upon the Department of the Navy for the effects, the determination by naval authorities as to the next of kin or heirs of the owner of the personal effects may be made on the basis of the following:

(i) Personnel records; or

(ii) Other documents applicable to the case; or

(iii) Title 10, U.S.C. Section 2771, to the extent that it prescribes an order of precedence among next of kin or heirs, namely, the widow or widower of the owner; if no widow or widower, then the child or children of the owner and descendants of deceased children, by representation; if none of the above, the parents of the owner or the survivor of them; or if none of the above, other persons determined to be eligible under the laws of the domicile of the owner.

(2) Such determination should be regarded as administrative rather than legal, as the determination does not vest title to effects or proceeds in the next of kin, heirs, or legal representative to whom the effects are delivered. Therefore, delivery of the personal effects to other than the owner will be made subject to the following advisory note which should be written on a copy of the inventory or in a letter:

> Delivery of the personal effects into the custody of other than the owner thereof, by the Department of the Navy, does not in any way vest title to the effects in the recipient. Delivery of the effects to the recipient is made so that distribution may be made in accordance with the laws of the state in which the owner of the effects was legally

domiciled or to restore the effects to the owner in the event of his return from a missing status.

(3) When it is impracticable to divide the personal effects of a person into equal shares, and two or more persons within a class, as provided in 10 U.S.C. section 2771, are entitled to receive the effects but cannot agree among themselves as to which one of them shall receive the effects, then all of the effects will be retained by either the Personal Effects Distribution Center at Norfolk, Virginia, or the Personal Effects Distribution Center at Oakland, California, for a period of two years from the date of death of the member. At the expiration of the two-year period such effects will be sold.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015; Pub. L. 89-554, 80 Stat. 379 (5 U.S.C. 301)

[26 FR 12659, Dec. 29, 1961, as amended at 37 FR 6472, Mar. 30, 1972; 44 FR 22456, Apr. 16, 1979]

§ 718.4 Delegations.

The Secretary of the Navy has delegated to the Director, Personal Services Division, Bureau of Naval Personnel with respect to personnel in the Navy, and to the Head, Personal Affairs Branch Manpower Department (Code MSPA), United States Marine Corps, with respect to personnel in the Marine Corps, authority to make all determinations to administer the act.

(Pub. L. 89-554, 80 stat. 379 (5 U.S.C. 301))

[17 FR 5391, June 14, 1952, as amended at 19 FR 7959, Dec. 2, 1954; 44 FR 22456, Apr. 16, 1979]

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Subparts A-B—[Reserved]

Subpart C—Trial Matters

Sec.

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719.113—719.114 [Reserved]
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Sec.

Subpart D—[Reserved]

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719.138 Fees of civilian witnesses.
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719.142 Suspension of counsel.
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719.155 Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.

AUTHORITY: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815, 5031, and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 5997, Mar. 6, 1973, unless otherwise noted.

Subparts A-B—[Reserved]

Subpart C—Trial Matters

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, i.e., any officer exercising general court-martial jurisdiction. Such recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have yet been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice.

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination, then the approval of the Attorney General of the United States or his designate must be obtained prior to the execution or issuance of an order to testify to such civilian witness. The cognizant officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(d) *Cases involving national security.* In all cases involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, a proposed grant of immunity shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. See section 0116f of the Manual of the Judge Advocate General regarding relations between the Departments of Defense and Justice. The cognizant officer exercising general court-martial jurisdiction may obtain approval by the Attorney General of a proposed grant of immunity by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(e) *Content of immunity requests.* In all cases in which approval of the Attorney General of the United States is required prior to the issuance of a grant of immunity, whether under paragraphs (c) or (d) of this section, the cognizant officer exercising general court-martial jurisdiction shall forward by message or letter the proposed order to testify and grant of immunity to the Judge Advocate General (Code 20). The order to testify should be substantially in the form set forth in Appendix A-1-d(4) of the Manual of the Judge Advocate General. Requests for assistance shall be in writing, should allow at least three weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the witness for whom the immunity is requested.

(3) Name of the employer or company with which a witness is associated or the military unit or organization to which a witness is assigned.

(4) Date and place of birth, if known, of the witness.

(5) FBI or local police file number, if any, and if known.

(6) Whether any State or Federal charges are pending against the witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief résumé of the background of the investigation or preceding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(i) What testimony the witness is expected to give;

(ii) How this testimony will serve the public interest;

(iii) Whether the witness (A) has invoked the privilege against self-incrimination; or (B) is likely to invoke the privilege;

(iv) If (iii)(B) is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(f) *Post-testimony procedure.* After a witness immunized in accordance with paragraphs (c) and (d) of this section has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530 via the Judge Advocate General (Code 20).

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(g) *Review.* Under some circumstances, the officer granting immunity to a witness may be disqualified from taking reviewing action on the record of the trial before which the witness granted immunity testified. A successor in command not participating in the grant of immunity would not be so disqaualified under those circumstances.

(h) *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(5) of the Manual of the Judge Advocate General. In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-d(6) of the Manual of the Judge Advocate General.

[38 FR 5997, Mar. 6, 1973, as amended at 39 FR 18436, May 28, 1974; 47 FR 49643, Nov. 2, 1982; 50 FR 23800, June 6, 1985]

§§ 719.113—719.114 [Reserved]

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information*—(1) *General.* There are valid reasons for making information available to the public concerning the administration of military justice. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity pertaining to their cases, public understanding of the problems of controlling misconduct in the military service, and the workings of military justice requires the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably be expected to have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of trial (court-martial sessions) or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.* (i) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(ii) Except in unusual circumstances, information which is subject to release under the regulation should be released by the cognizant public affairs officer; requests for information received from representatives of news media should be referred to the public affairs office for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry, the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in paragraph (6) of this section:

(i) The accused's name, grade, age, unit, regularly assigned duties, duty station, and sex.

(ii) The substance of the offenses of which the individual is accused or suspected.

(iii) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(iv) The identity of the apprehending and investigative agency, and the identity of accused's counsel, if any.

(v) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(vi) The type and place of custody, if any.

(vii) Information which has become a part of the record of proceedings of the court-martial in open session.

(viii) The scheduling of any stage in the judicial process.

(ix) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released, except as provided in paragraph (a)(6) of this section.

(i) Subjective opinions, observations, or comments concerning the accused's character, demeanor at any time (except as authorized in paragraph (4)(v) of this section), or guilt of the offense or offenses involved.

(ii) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(iii) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(iv) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(v) The identity, testimony, or credibility of possible witnesses, except as authorized in paragraph (4)(iii), of this section.

(vi) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(vii) References to confidential sources or investigative techniques or procedures.

(viii) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under paragraph (a)(5) of this section or the nonrelease of information permitted under paragraph (a)(4) of this section. Attention should be given to the Secretary of the Navy instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5C series). Consultation with the command judge advocate, if one is assigned, or with the cognizant Naval Legal Service Office concerning interpretation and application of these instructions is encouraged.

(b) *Spectators.* (1) The sessions of courts-martial shall be open to the public, which includes members of both the military and civilian communities. In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, exclude specific persons from the courtroom, and close a session. Video and audio recording and taking of photographs, except for the purpose of preparing the record of trial, in the courtroom during the proceedings and radio or television broadcasting of proceedings from the courtroom shall not be permitted. The military judge may, as a matter of discretion, permit contemporaneous closed-circuit video or audio transmission to permit viewing or hearing by an accused removed from the courtroom or by spectators when courtroom facilities are inadequate to accommodate a reasonable number of spectators.

(2) *At pretrial hearings.* In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832 or a court of inquiry or investigation conducted pursuant to the Manual of the Judge Advocate General, the presiding officer, upon motion of the Government or the defense or upon his motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

[38 FR 5997, Mar. 6, 1973, as amended at 47 FR 49644, Nov. 2, 1982; 50 FR 23800, June 6, 1985]

Subpart D—[Reserved]

Subpart E—Miscellaneous Matters

§ 719.138 Fees of civilian witnesses.

(a) *Method of Payment.* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed public voucher for such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial;

(2) Summary court officer;

(3) Counsel for the court in a court of inquiry;

(4) Recorder or junior member of a board to redress injuries to property, or

(5) Military or civil officer before whom a deposition is taken.

The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 6), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

(b) *Obtaining money for advance tender or payment.* Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) *Reimbursement.* If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) *Certificate of person before whom deposition is taken.* The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned.

(e) *Payment of accrued fees.* The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) *Computation.* Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) *Nontransferability of accounts.* Accounts of civilian witnesses may not be transferred or assigned.

(h) *Signatures.* Signatures of witnesses signed by mark must be witnessed by two persons.

(i) *Rates for civilian witnesses prescribed by law*—(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a Naval tribunal at a specified place or to appear at a place where his deposition is to be taken for use before a court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this paragraph shall be construed as authorizing the payment of attendance fees to witnesses for:

(i) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(ii) For travel which is performed prior to being duly summoned as a witness; or

(iii) For travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this paragraph.

(2) *Civilian witnesses in Government employ.* When summoned as a witness, a civilian in the employ of the Government shall be paid as authorized by Joint Travel Regulations.

(j) *Supplemental construction of section.* Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested or whose testimony is determined not to meet the standards of relevancy and materiality set forth in accordance with MCM, 1984, R.C.M. 703.

(k)*Expert witnesses* (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See paragraph (l) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (i) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with MCM, 1984, R.C.M. 703(d), may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(l) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

[38 FR 5997, Mar 6, 1973, as amended at 47 FR 49644, Nov. 2, 1982; 50 FR 23801, June 6, 1985]

§§ 719.139—719.141 [Reserved]

§ 719.142 Suspension of counsel.

(a) *Report of Allegations of Misconduct or Disability.* When information comes to the attention of a member of a court-martial, a military judge, trial or defense counsel, staff judge advocate, member of the Navy-Marine Corps Court of Military Review or other directly interested or concerned party that a judge advocate or civilian who is acting or is about to act as counsel before a proceeding conducted under the UCMJ or MCM is or has been unable to discharge properly all the duties of his or her position by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a judge advocate or attorney, such information should be reported to the commanding officer of that judge advocate or, in the case of civilian counsel, to the officer exercising general court-martial jurisdiction over the command convening the proceedings or to the Judge Advocate General.

(b) *Form of Report.* The report shall:

(1) Be in writing, under oath or affirmation, and made and signed by the individual reporting the information.

(2) State that the individual reporting the information has personal knowledge or belief or has otherwise received reliable information indicating that:

(i) The counsel is, or has been, unable to discharge properly all the duties of his or her office by reason of mental or physical disability; or

(ii) The counsel is or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession; or

(iii) The counsel is unworthy or unqualified to perform his or her duties;

(3) Set forth the grounds of the allegation together with all relevant facts; and

(4) Be forwarded to the appropriate authority as set forth in paragraph (a).

(c) *Consideration of the Report*—(1) *Action by the Commanding Officer of a judge advocate.* Upon receipt of the report, the commanding officer:

(i) Shall dismiss any report relating to the performance of a judge advocate more properly appealed under law or any report that is frivolous, unfounded, or vague and return it to the reporting individual;

(ii) May make further inquiry into the report at his or her discretion to determine the merits of the report. The commanding officer may appoint an officer to investigate informally the allegations of the report to determine whether further action is warranted. Any officer so appointed should be a judge advocate senior in rank to the judge advocate being investigated;

(iii) May take appropriate action to address and dispose of the matter being mindful of such measures as warning, counseling, caution, instruction, proceedings in contempt, therapy, and other punitive or administrative action; or

(iv) Shall, if the commanding officer is of the opinion that evidence of disability or professional or personal misconduct exists, and that remedial measures short of suspension or decertification are not appropriate or will not be effective, forward the original complaint, a written report of the inquiry or investigation, all other relevant information, and his or her comments and recommendations to the officer in the chain of command exercising general court-martial authority.

(2) *Action by Officer Exercising General Court-Martial Authority.* (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the officer exercising general court-martial convening authority:

(A) May take the action authorized by subsections (c)(1)(i), (ii) or (iii); or

(B) Shall, if he or she considers that evidence of disability or professional or personal misconduct exists and that other remedial measures short of suspension or decertification are not appropriate or will not be effective, appoint a board of officers to investigate the matter and to report its findings and its recommendations. This board shall be comprised of at least three officers, each an Article 27(b), Uniform Code of Military Justice, certified judge advocate. If practicable, each of the officers of the board should be senior to the judge advocate under investigation. If the counsel is a member of the Marine Corps, a majority of the members of the board should be Marine Corps judge advocates. The senior officer of the board shall cause notice to be given to the counsel, judge advocate or civilian (respondent), informing him or her of the misconduct or other disqualification alleged and affording him or her the opportunity to appear before the board for a hearing. The respondent shall be permitted at least ten (10) days' notice prior to the hearing. Failure to appear on a set date after notice shall constitute waiver of appearance, absent good cause shown. The respondent shall be generally afforded the rights of a party as set out in section 0304 of this Manual, except that, in the event the judge advocate respondent wishes to have military counsel appointed, he or she shall not have the right to select or identify a particular military counsel. A civilian respondent may not be represented by military counsel, but may be represented by civilian counsel at no expense to the Government. Upon ascertaining the relevant facts after notice and hearing, a written report of the findings and recommendations of the board shall be made to the officer who convened the board. In all cases, a written copy of the board's findings and recommendations shall be provided to the respondent. The respondent shall be given an opportunity to comment on the report in writing.

(ii) Upon receipt of the report of the board of investigation, the officer exercising general court-martial authority shall:

(A) Return the report to the board for further investigation, if the investigation is determined to be incomplete; or

(B) Forward the report of the board of investigation to the Judge Advocate General together with comments and recommendations concerning suspension of the counsel involved.

(3) *Action by the Judge Advocate General.* (i) Upon receipt of a report of an allegation of misconduct or disability of a counsel, the Judge Advocate General:

(A) May take the action authorized by subsections (c)(1)(i), (ii), or (iii);

(B) May appoint a board of officers for investigation and hearing in accordance with subsections (c)(2)(i)(B) or

(C) May request the officer exercising general court-martial jurisdiction over the command of the respondent (if judge advocate counsel) or over the proceedings (if civilian counsel) to take the matter for investigation and hearing in accordance with subsection (c)(2)(i)(B).

(ii) Upon receipt of the report of the investigating board, the Judge Advocate General:

(A) May determine whether the respondent is to be suspended or decertified and, if so, whether for a stated term or indefinitely;

(B) May determine that the findings of the board do not warrant further action; or

(C) May return the report to the sending officer with appropriate instructions for further inquiry or action. The Judge Advocate General may, sua sponte, or upon petition of the respondent, modify or revoke any prior order of suspension or dismissal of a report. Further, if the Judge Advocate General suspends counsel, the Judge Advocates General of the other armed forces will be notified.

(d) *Grounds justifying suspension of counsel or suspension or decertification of a Judge Advocate.* (1) Suspension or decertification is to be employed only after it has been established that a counsel has been unable to discharge properly all the duties of his or her office by reason of mental or physical disability or has been engaged in professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or is failing to meet the ethical standards of the profession or is otherwise unworthy or unqualified to perform the duties of a counsel Action to suspend or decertify should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has initiated an aggressive, zealous or novel defense, or the apparent misconduct stems from inexperience or lack of instruction.

(2) Specific grounds for suspension or decertification include, but are not limited to, the following:

(i) Demonstrated incompetence while acting as counsel before, during or after a court-martial.

(ii) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics.

(iii) Fabricating papers or other evidence.

(iv) Tampering with a witness.

(v) Abusive conduct toward the court-martial, the Navy-Marine Corps

Court of Military Review, the military judge, or opposing counsel.

(vi) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel in the Manual for Courts-Martial.

(vii) Conviction of an offense involving moral turpitude or conviction for violation of article 48, UCMJ.

(viii) Disbarment by a State Bar, Federal Court, or the United States Court of Military Appeals.

(ix) Suspension as counsel by the Judge Advocate General of the Navy, Army, or Air Force or the General Counsel of the Department of Transportation.

(x) Flagrant or repeated violations of the *Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial* as outlined in Appendix A-1-p(1) of the Manual of the Judge Advocate General.

(xi) Flagrant or repeated violations of the provisions of section 0134 of this Manual of the Judge Advocate General dealing with the *Release of Information Pertaining to Accused Persons; Spectators at Judicial Sessions.*

(xii) Failure to meet the rules set forth in the ABA Code of Professional Responsibility and the ABA Standards on *Fair Trial and Free Press* and *The Prosecution Function and the Defense Function.* In view of the unique mission and personal requirements of the military, many of the rules and principles of the ABA Code or Standards are not applicable to the military lawyer. Accordingly, the rules are to be used as a guide only, and a failure to comply with the specific wording of a rule is not to be construed as a violation of the rule where common sense would indicate to a reasonable person that there is a distinction between the civilian context, which the codes were drafted to embrace, and the unique concerns of the military setting, where the codes serve as a general guide.

[50 FR 23801, June 6, 1985]

§ 719.143 Petition for new trial under 10 U.S.C. 873.

(a) *Statutory provisions.* 10 U.S.C. 873, provides, "At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, that Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

(b) *Submission Procedures:* At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court-martial. The petition for new trial may be submitted by the accused personally, or by accused's counsel, regardless of whether the accused has been separated from the service. A petition may not be submitted after the death of the accused.

(c) *Contents of petitions:* The form and contents of petitions for new trial are specified in MCM, 1984, R.C.M. 1210(c). The petition for a new trial shall be written and shall be signed under oath or affirmation by the accused, by a person possessing the power of attorney of the accused for that purpose, or by a person with the authorization of an appropriate court to sign the petition as the representative of the accused. The petition shall contain the following information, or an explanation why such matters are not included:

(1) The name, service number, and current address of the accused;

(2) The date and location of the trial;

(3) The type of court-martial and the title or position of the convening authority;

(4) The request for the new trial;

(5) The sentence or a description thereof as approved or affirmed, with any later reduction thereof by clemency or otherwise,

(6) A brief description of any finding or sentence believed to be unjust;

(7) A full statement of the newly discovered evidence or fraud on the court-martial which is relied upon for the remedy sought;

(8) Affidavits pertinent to the matters in subsection (6)i; and

(9) Affidavit of each person whom the accused expects to present as a witness in the event of a new trial. Each affidavit should set forth briefly the relevant facts within the personal knowledge of the witness.

(d) *Who may act on petition.* If the accused's case is pending before a Court of Military Review or the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise, the Judge Advocate shall act on the petition.

(e) *Ground for New Trial.* A new trial may be granted only on grounds of newly discovered evidence or fraud on the court-martial.

(1) A new trial shall not be granted on the grounds of newly discovered evidence unless the petition shows that;

(i) The evidence was discovered after the trial,

(ii) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and

(iii) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

(2) No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentence adjudged.

(f) *Action on the petition.* (1) The authority considering the petition may cause such additional investigation to be made and such additional information to be secured as that authority believes appropriate. Upon written request, and in his discretion, the authority considering the petition may permit oral argument on the matter.

(2) When a petition is considered by the Judge Advocate General, any hearing may be before the Judge Advocate General or before an officer or officers designated by the Judge Advocate General.

(3) If the Judge Advocate General believes meritorious grounds for relief under Article 74, Uniform Code of Military Justice have been established but that a new trial is not appropriate, the Judge Advocate General may act under article 74, Uniform Code of Military Justice, if authorized, or transmit the petition and related papers to the Secretary concerned with a recommendation.

(4) The Judge Advocate may also, in cases which have been finally reviewed but have not been reviewed by a Court of Military Review, act under article 69, Uniform Code of Military Justice.

[50 FR 23803, June 6, 1985]

§ 719.144 Application for relief under 10 U.S.C. 869, in cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 869 provides in pertinent part, "The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time."

(b) *Time Limitations.* In order to be considered by the Judge Advocate General, an application for relief must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be considered if the Judge Advocate General determines, in his or her sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.

(c) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that reviewed the case under 10 U.S.C. 864(a) or (b). If the original record of trail is held by the command that reviewed the case under 10 U.S.C. 864(a) or (b), it shall be forwarded as a enclosure to the endorsement. If the original record of trial has been filed in the National Personnel Records Center, the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from the receipt returned from the National Personnel Records Center to the sending activity. This endorsement shall also include information and specific comment on the grounds for relief asserted in the application, and an opinion on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) *Contents of applications.* All applications for relief shall contain:

(1) Full name of the applicant;

(2) Social Security number and branch of service, if any;

(3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;

(4) Address at time the application is forwarded;

(5) Date of trial;

(6) Place of trial;

(7) Command title of the organization at which the court-martial was convened (convening authority);

(8) Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;

(9) Type of court-martial which convicted the applicant, and sentence adjudged;

(10) General grounds for relief which must be one or more of the following:

(i) Newly discovered evidence;

(ii) Fraud on the court;

(iii) Lack of jurisdiction over the accused or the offense;

(iv) Error prejudicial to the substantial rights of the accused;

(v) Appropriateness of the sentence;

(11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);

(12) Any other matter which the applicant desires to submit;

(13) Relief requested; and

(14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and

(15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant's copy of the record of trial will *not* be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(e) *Signatures on applications.* Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

[50 FR 23804, June 6, 1985]

§§ 719.145—719.150 [Reserved]

§ 719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee's right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

§ 719.155 Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.

(a) *Statutory provisions.* 10 U.S.C. 874(b) provides that the "Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial."

(b) *Submission procedures.* Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, VA 22332-2400. Except in unusual circumstances, applications will not normally be considered if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under 10 U.S.C. 874(b).

(c) *Contents of the application.* All applications shall contain:

(1) Full name of the applicant;

(2) Social Security Number, service number (if different), and branch of service of the applicant;

(3) Present age and date of birth of the applicant;

(4) Present residence of the applicant;

(5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;

(6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;

(7) Offense(s) of which the applicant was convicted, and sentence finally approved from the trial which resulted in the punitive discharge or dismissal;

(8) Date the punitive discharge or dismissal was executed;

(9) Applicant's present marital status, and number and ages of dependents, if any;

(10) Applicant's civilian criminal record (arrest(s) with disposition, and conviction(s)), both prior and subsequent to the court-martial which resulted in the punitive discharge or dismissal;

(11) Applicant's entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);

(12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant's full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to 10 U.S.C. 874(b) (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits. (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant's character primarily as reflected in the civilian community subsequent to the punitive discharge or dismissal which is the subject of the application);

(16) Any matters, other than the character affidavits, supporting the considerations described in subparagraph (18) below;

(17) Any other relief sought within the Department of the Navy and outside the Department of the Navy in-

cluding dates of application and final dispositions;

(18) A statement by the applicant, setting forth the specific considerations which the applicant believes constitute "good cause," so as to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. (In this connection, 10 U.S.C. 874(b) does not provide another regular or extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial which resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under 10 U.S.C. 874(b). As used in the statute, "good cause" was envisioned by Congress to encompass only Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes "good cause" under 10 U.S.C. 874(b), the primary Secretarial concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation. Material submitted by the 10 U.S.C. 874(b) applicant should be consistent with the foregoing.)

(d) *Signature on application.* Unless incapable of making application himself or herself, the applicant shall personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian and other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application for purposes of this paragraph only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

(e) *Privacy Act Statement.* Disclosure of personal information requested by paragraph (c) of this section is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

[47 FR 49645, Nov. 2, 1982, as amended at 50 FR 23804, June 6, 1985]

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

Subpart A—Delivery of Personnel

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6021, Mar. 6, 1973, unless otherwise noted.

Subpart A—Delivery of Personnel

§ 720.1 Delivery when personnel within territorial limits of the requesting State.

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in § 720.8. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

[38 FR 6021, Mar. 6, 1973, as amended at 48 FR 4465, Feb. 1, 1983]

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, upon compliance with the provisions of this part and § 720.5, and subject to the exceptions in § 720.8 to deliver such person for the purpose of making him amendable to prosecution. The serviceman may be delivered upon formal and informal waiver of extradition in accordance with paragraph (b) of this section, or upon presentation of a fugitive warrant, in which case the procedures of paragraph (c) apply.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (c) of this section.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after execution.

(4) When an individual declines to waive extradition, the nearest naval legal service office or Marine Corps Staff Judge Advocate shall be informed and shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, without the permission of the Secretary of the Navy (Judge Advocate General), until the matter of extradition is resolved.

(c) *Fugitive warrants.* (1) A fugitive warrant, as used in this part is a warrant for the arrest of an individual issued by a State court of competent jurisdiction. Normally, a State requesting delivery of a serviceman from another State will issue a fugitive warrant to the State where the serviceman is located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the serviceman is located, the latter State will normally request delivery of the serviceman to local State authorities. Delivery to local State officials should be arranged by Navy or Marine Corps officers designated in paragraph (a) of this section and subject to the conditions of § 720.8 and paragraphs (c) (3) and (4) of this section.

(3) Upon receipt of such a request for delivery of a serviceman under fugitive warrant to such State authorities, if such serviceman voluntarily waives extradition, the provisions of paragraph (b) of this section apply. If waiver is refused, the serviceman, after delivery to local State authorities, will then have the opportunity to contest extradition in the courts of the State in which he is located.

Where waiver is refused, the nearest naval legal service office or Marine Corps Staff Judge Advocate is responsible for effecting liaison with officials of both the requesting State and State in which the serviceman is located. The provisions of paragraph (b)(4) of this section regarding transfer of the serviceman apply while State authorities are actively proceeding to effect extradition.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by § 720.5 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

(d) *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see § 720.3.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26860, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§ 720.3 Personnel stationed outside the United States.

(a) *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with § 720.1 or § 720.2, as applicable.

(b) *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy.

(1 CFR 18.14, and Part 21, Subpart B)

[40 FR 12777, Mar. 21, 1975, as amended at 45 FR 8599, Feb. 8, 1980]

§ 720.4 JAG Authority.

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under §§ 720.1, 720.2, 720.3, 720.5, 720.15, 720.20, 720.23, and 720.30.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 41 FR 26861, June 30, 1976; 45 FR 8599, Feb. 8, 1980; 48 FR 4465, Feb. 1, 1983]

§ 720.5 Agreement required prior to delivery to State authorities.

(a) *Delivery under 10 U.S.C. 814.* In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in Appendix A to this section. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with § 720.15) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidental expenses en route thereto, and the Department of the Navy is so informed. Any departure from the agreement set forth in Appendix A to this section must have prior approval from the Secretary of the Navy (Judge Advocate General).

(b) *Delivery under Interstate Agreement on Detainers Act.* Special forms, not contained in the Manual of the Judge Advocate General, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to 10 U.S.C. 814. *See* § 720.15 for a detailed discussion of the Act.

APPENDIX A TO § 720.5—DELIVERY AGREEMENT

In consideration of the delivery of (name of person delivered) —————————— ,United States Navy (United States Marine Corps), to ———, at ———, for trial upon the charge of ————————, I hereby agree pursuant to the authority vested in me as —————————— that (name of person delivered) ——————————, United States Navy (United States Marine Corps) will be transported to the State of ———————— without expense to him or the United States and that the Commanding Officer of the ———————— will be notified immediately of the outcome of the trial and that the said (name of person delivered) ——————————, will be returned to the ————————, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, provided that the Department of the Navy shall then desire his return.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980; 47 FR 4465, Feb. 1, 1983]

§§ 720.6—720.7 [Reserved]

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of personnel to Federal, State, Territory, Commonwealth, or local authorities if reasonably practicable.

(b) *When delivery may be refused.* Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0107(g)(3)(a) of the Manual of the Judge Advocate General of this chapter.

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

(c) *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see § 720.15.

(d) *Reports required.* When refusal of delivery is intended, see section 1310 of the Manual of the Judge Advocate General.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 45 FR 8599, Feb. 8, 1980; 48 FR 4465, Feb. 1, 1983]

§§ 720.9—720.11 [Reserved]

§ 720.12 Personnel released by civil authorities on bail or on their own recognizance.

A person in the Navy or Marine Corps arrested by Federal, State, or territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or lease to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

§§ 720.13—720.14 [Reserved]

§ 720.15 Request for delivery of personnel serving sentence of court-martial.

(a) *General.* Authority to honor requests for delivery of military personnel serving a sentence of court-martial is provided by 10 U.S.C. 814. Although seldom utilized, additional authority and mandatory obligation to deliver such personnel is provided by the Interstate Agreement on Detainers Act (18 U.S.C. Appendix, hereinafter "the Act") which applies to the Federal agency that is holding the prisoner and has been adopted by approximately four-fifths of the state jurisdictions. The Department of the Navy as an agency of the Federal Government shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request, or at the request of the state where the charges are pending.

(b) *Interstate Agreement on Detainers Act.* Upon request under the Act by either the prisoner himself or state authorities, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall effect liaison with the appropriate state officials and shall monitor and ensure that action is taken by the cognizant commander on all such requests. While requests between Federal authorities do not appear to be specifically covered by the Act, prisoner requests for disposition of Federal charges shall generally be handled in accordance with the procedures outlined herein except that no delivery agreement is required by Federal authorities. In the case of requests by state authorities under the Act, liaison shall be established with the Director, Bureau of Prisons, Washington, D.C. 20537, who has sole authority to deny the request. The Act provides that the court-martial sentence shall continue to run during temporary custody.

(1) *State request.* State officals may demand delivery of prisoners in military custody under section 2, Article IV, of the Act if (i) a detainer has been lodged against the prisoner; and (ii) the prisoner is serving a sentence (regardless of whether an appeal is in process). Delivery of such prisoner upon state request is mandatory as to Navy/Marine Corps authorities and may be refused only if the request is disapproved by the Director of the Bureau of Prisons, Washington, D.C., as the designee of the Attorney General for this purpose. 28 CFR 0.96(a). There has been no further delegation to military authority. The consent of the prisoner is not required and the Director of the Bureau of Prisons is the only authority who can provide relief to the prisoner.

(2) *Prisoner request.* The obligation to grant temporary custody under the Act applies with equal force to requests to be delivered to state authority made by the prisoner. Section 2, Article III(c), of the Act requires the prisoner's custodial official to inform him of the existence of any detainer and of his right to request disposition. The prisoner's request is directed to the custodial official who is required to forward it to the appropriate prosecuting official and court together

with a certificate of prisoner status, all as provided by Artricle III of the Act.

(3) *Delivery*—(i) *Requests under Detainers Act.* When a request for delivery is received from civil authorities pursuant to section 2, Article IV of the Act, the prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, D.C. 20537, to deny the request, within 30 days after such request is received. Upon the expiration of such 30-day period or upon denial of the prisoner's request by the Director of the Bureau of Prisons, whichever occurs first, the prisoner shall be delivered to the requesting authority as soon as practicable.

(c) *10 U.S.C. 814.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by 10 U.S.C. 814 and 32 CFR Part 720. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., situations were additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. The agreement discussed in § 720.5 will be required as a condition precedent to delivery. Unlike delivery under the Act, delivery of custody pursuant to 10 U.S.C. 814 operates to interrupt the execution of the court-martial sentence.

(d) *Article V of the Detainers Act.* Nothing in the Detainers Act generally or in Article V(e) specifically requires the automatic return of a military prisoner, delivered to the temporary custody of State or Federal officials and thereafter convicted by a civilian tribunal, to military authorities either prior to or after the execution of the civilian sentence where military authorities do not request such a return. Military authorities may request the return of a military prisoner delivered to civilian temporary custody under the Act, and such prisoner should be returned upon completion of civilian prosecution. If such prosecution results in conviction and sentencing by the civilian tribunal, such civilian sentence shall not be served by a military prisoner (whose return prior to sentence has been requested by military authorities) until after completion of the court-martial sentence. If return prior to civilian sentence is not requested and is not otherwise effected, conviction in a civil tribunal interrupts the execution of the sentence of the court-martial. A military prisoner whose return after serving his civilian sentence is requested by military authorities shall be returned and be required to serve the remaining portion of the court-martial sentence. See 10 U.S.C. 814(b). However, nothing requires military authorities to request such a return even when a portion of the court-martial sentence may remain uncompleted. Where return is not to be requested, consideration should be given to the separation of the military prisoner under applicable directives or regulations.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 26861, June 30, 1976, as amended at 48 FR 4465, Feb. 1, 1983]

Subpart B—Service of Process and Subpoenas Upon Personnel of the Naval Establishment

§ 720.20 Service of process upon personnel.

(a) *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or territory out of which the process issues are considered within the jurisdiction of that State or territory for the purpose of service of process. The commanding officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will insure that the nature of the process is explained to the person concerned.

(b) *Personnel beyond the jurisdiction of the court.* (1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in paragraph (a) of this section for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will insure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

(c) *Service of process arising from official duties.* (1) If the service of process involves a potential claim against the Government, see §§ 750.21(a) and (b) and 750.32 of this chapter. While the right to remove to Federal court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Any military member or civilian employee who is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts, notify the Judge Advocate General (Code 14), preferably by telephone, of the service, and immediately forward to that Office the pleadings and process in the case. The military member or civilian employee will be advised concerning his/her right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his/her rights under the Federal Driver's Act (28 U.S.C. 2679B), (if applicable), and the right of a Federal employee to be represented by Department of Justice attorneys in State criminal proceedings and in civil and Congressional proceedings in which that employee is sued or subpoenaed in an individual capacity, as delineated in 28 CFR 50.15. Any letter requesting representation shall be addressed to the Secretary of the Navy (Judge Advocate General), and shall be endorsed by the commanding officer, who shall provide all necessary data bearing upon the question as to whether the employee was acting within the scope of employment at the time of the incident out of which the suit arose.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. For lawsuits filed in the U.S. District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. In habeas corpus cases, liaison with the U.S. attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by section 1314 of the Manual of the Judge Advocate General.

(d) *Service of process of foreign courts.* (1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846). Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General. Service of process when the United States Government or one of its agencies or instrumentalities is the named defendant may involve a situation where the doctrine of sovereign immunity will allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, whether or not the suit involves acts performed in the course of official duties. When the report required by section 1325 of the Manual of the Judge Advocate General is made, the Judge Advocate General will make arrangements through the Department of Justice for defense of a suit against the United States or an official acting within the scope of his official duties, or other appropriate arrangements, and will issue appropriate instructions.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with paragraph (c) of this section. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of paragraph (a), of this section, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

(e) *Leave or liberty to be granted persons served with process.* In those cases where personnel are served with process, as noted in subsection a above, or accept service of process, as noted in paragraph (b) of this section, the commanding officer normally should grant leave or liberty to the person served in order to permit him/her to comply with the process; provided, such absence will not prejudice the best interests of the naval service. In cases where a member is being called as a witness for a nongovernmental party only because of performance of official duties, the commanding officer is authorized to issue the member permissive orders authorizing attendance at the trial at no expense to the Government. Members are permitted to accept fees and mileage tendered.

(f) *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General) RCS JAG 5821-8.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 41 FR 26862, June 30, 1976, 45 FR 8599, Feb. 8, 1980; 48 FR 4466, Feb. 1, 1983]

§ 720.21 Personnel subpoenaed as witnesses in State or local courts.

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in § 720.20, the provisions of § 720.20(e) apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases) the procedures described in section 1322(a) of the Manual of the Judge Advocate General may be followed.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6021, Mar. 6, 1973, as amended at 45 FR 8599, Feb. 8, 1980]

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in the Secretary of the Navy Instruction 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a system of records as defined in the Secretary of the Navy Instruction 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order when such records are not in a 'system of records' as defined by the Privacy Act (5 U.S.C. 552a) except as noted in paragraphs (b) and (c) of this section. In determining whether or not a record contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of the Secretary of the Navy Instruction 5720.42 series. If the record is in a "system of records," it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and the Secretary of the Navy Instruction 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with the Chief of Naval Operations Instruction 5510.1 series.

(b) *Records in the custody of National Personnel Records Center.* Court orders, *subpoenas duces tecum*, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to personal information, the release of which would result in a clearly unwarranted invasion of personal privacy, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 FR 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4 (reprinted in MANMED article 23-255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or For-Official-Use-Only information, such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the U.S. Attorney or U.S. Marshal be requested so that custody of the records may be maintained.

[38 FR 6021, Mar. 6, 1973, as amended at 48 FR 4466, Feb. 1, 1983]

§ 720.31 Production of official records in the absence of court order.

(a) *General.* Release of official records outside the Department of the Navy in the absence of a court order is governed by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). The following sources pertain: SECNAVINST 5211.5 series (Privacy) and SECNAVINST 5720.42 series (Freedom of Information).

(b) *Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs.* Except as provided in this section, only the Assistant Judge Advocates General (Civil Law) and (Military Law) shall make determinations concerning the release of the records covered herein if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records. Local record holders are reminded that the authority to release records does not necessarily include denial authority.

(1) *JAG Manual Investigations (including enclosures).* Any request for release outside the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination, except that Privacy Act requests for release shall be forwarded to the Assistant Judge Advocate General (Civil Law) for determination.

(2) *Court-martial records and Articles 69 and 73 petitions.* These are matters of public record and may be released by any local holder. Court-martial records should be released only following proper authentication.

(3) *Article 138 Complaints of Wrongs.* Forward as in paragraph (b)(1) of this section.

(c) *Affirmative claims files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the Government's interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility for the area.

(d) *Accounting for disclosures of records from systems of records.* When records located in a "system of records" are released, the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a of the Manual of the Judge Advocate General is recommended for this purpose.

(1 CFR 18.14, and Part 21, Subpart B)

[45 FR 8599, Feb. 8, 1980, as amended at 48 FR 4466, Feb. 1, 1983]

§ 720.32 Certificates of full faith and credit.

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

PART 721—STANDARDS OF CONDUCT

Sec.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 133 and 5031; E.O. 11222, May 8, 1965; 5 CFR Part 735; 32 CFR Part 40.

SOURCE: 50 FR 9000 Mar. 6, 1985, unless otherwise noted.

§ 721.1 Purpose.

Part 721 implements and supplements Pub. L. 95-521, as amended by Pub. L. 96-19 and Pub. L. 96-28; Part 40 of this title; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 301; and 5 CFR Parts 734, 735, 737, and 738, by prescribing required standards of ethical conduct governing all personnel in the Department of the Navy, to place responsibility and accountability for ensuring compliance upon commanding officers and supervisors, to publish financial disclosure reporting requirements and procedures applicable to certain naval personnel, to set forth conflict of interest statutes applicable to certain categories of both former and current naval personnel, and to promulgate bedrock standards of conduct as a concise statement of expected ethical behavior.

§ 721.2 [Reserved]

§ 721.3 Scope and effect.

(a) *Applicability.* The provisions of this Part apply to all naval personnel as defined in § 721.4(a). The provisions of § 721.6(k)(2) apply to all retired military naval personnel and members of Reserve components not on active duty. The provisions of § 721.7(a), §§ 721.10, and 721.11 apply to certain former naval personnel. The provisions of § 721.12 apply to all retired Regular officers.

(b) *Violations.* The bracketed portions of § 721.6 are regulatory general orders, apply to all naval personnel individually, and need no further implementation. A violation of these provisions is punishable in accordance with the Uniform Code of Military Justice for military personnel and is the basis for appropriate disciplinary procedures with respect to civilian employees. Noncompliance with other provisions of the instruction is expected to be corrected by timely administrative action.

§ 721.4 Definitions.

(a) *Naval personnel.* All Department of the Navy civilian officers and employees, active-duty officer and enlisted personnel (both Regular and Reserve), special Government employees, and personnel of nonappropriated fund instrumentalities.

(b) *Department of Defense (DOD) components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the joint, unified, and specified commands, the Defense agencies, and nonappropriated fund instrumentalities.

(c) *Special Government employee.* A person who is retained, designated, appointed or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefit (for example, discounts, passes, and promotional vendor training) given or extended to or on behalf of naval personnel or their spouses, minor children or members of their households for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Appropriate supervisor.* That superior within the chain of authority who is acquainted with the duties of the naval personnel concerned and can best determine the existence and effect of any conflict of interest of such personnel. Ordinarily, this will be the immediate superior of the person concerned. Each commanding officer and head of activity should ensure that all personnel are aware of the identity of their appropriate supervisor.

§ 721.5 General policies governing the conduct of naval personnel.

(a) *Proper conduct of official activities.* (1) Naval personnel shall become familiar with the scope of authority for and the limitations concerning the activities for which they have responsibilities.

(2) The attention of naval personnel is directed to the statutory prohibitions that apply to the conduct of naval personnel. See § 721.15.

(3) Naval personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of United State laws, Executive Orders, applicable directives, instructions, or regulations.

(4) In cases of doubt of the propriety of a proposed action or decision in terms of regulations or law, naval per-

sonnel shall consult legal counsel or, if appropriate, the Designated Agency Ethics Official, a deputy ethics official or ethics counselor (hereafter collectively referred to as "ethics officials"; see paragraphs (a), (b), (g), and (h) of § 721.8) to ensure the proper and lawful conduct of naval programs and activities.

(b) *Conduct prejudicial to the Government.* Naval personnel shall avoid any action whether or not specifically prohibited by this instruction that might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) *Standards of personal judgment.* All naval personnel will adhere strictly to the standards of conduct and related requirements prescribed. In some instances, standards are imposed that require the exercise of personal judgment. Naval personnel must consider each such instance carefully and be prepared to account for the manner in which their judgment is exercised. This is particularly true in situations that involve acceptance of hospitality or favors from persons or entities who do or seek to do business with the Department of Defense.

(d) *Dealings with business and industry representatives.* Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility that require them to observe the highest ethical standards. Practices that may be accepted in the private business world are not necessarily acceptable for naval personnel. Naval personnel will not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict of interest may arise or appear to arise by reason of the acceptance of gratuities or by any other action that could influence or reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Government. Strict impartiality is often particularly difficult to maintain when business relationships are allowed to become overly personal. Naval personnel should at all times ensure that persons doing business or attempting to do business with the Department of the Navy or who represent such entities are not permitted to ingratiate themselves to the extent that naval personnel hesitate to deny requests for special treatment made by such persons or otherwise to follow the rule of strict impartiality when dealing with such persons in their official capacities. Acceptance of gratuities (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of the Navy may be a source of embarrassment to the Department and to the naval personnel involved, may affect the objective judgment of the recipient, and may impair public confidence in the integrity of business relations between the Department and industry. It is emphasized that prohibited conflicts and apparent conflicts of interest can sometimes arise even from relationships and transactions that the personnel concerned perceive as inconsequential. When in doubt, naval personnel will refrain from accepting gratuities, attending functions, or accepting other invitations of a hospitable nature.

(e) *Preferential treatment.* Special treatment must not be accorded to particular individuals or firms unless equivalent treatment is also accorded to other justifiably entitled individuals or firms.

(f) *Acquiring conflicting financial interests.* Notwithstanding that they may be required to submit reports of their personal financial circumstances, naval personnel must at all times avoid acquiring or retaining financial interests that would disqualify them from performing their assigned duties or responsibilities. Some of the more likely situations in which conflicts of interest might arise are where naval personnel have Government duties or responsibilities related to business entities:

(1) With which they, their spouses, minor children, or household members are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;

(2) With which they, their spouses, minor children, or household members are negotiating or have arrangements for prospective employment; or

(3) In which they, their spouses, minor children, or household members have interests through ownership of stock, stock options, bonds, or other securities or other financial arrangements, such as trusts, or through participation in certain types of pension or retirement plans.

(g) *Membership in associations.* Naval personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. Under certain circumstances, holding a position of trust or responsibility in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. For example, a commanding officer may not hold a position of trust or responsibility in an insurance company or an employee welfare or benefit organization that sells insurance to its members since the official duties of a commanding office require the exercise of control over the solicitation of insurance within the command. Secretary of the Navy Instruction (SECNAVINST) 5760.4 (series) sets forth Department of the Navy policy regarding participation by naval activities and naval personnel in the activities of private associations.

(h) *Equal opportunity.* Naval personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, handicapping condition, or national origin in accordance with equal opportunity directives. See, for example, SECNAVINST 5350.6 (series) and SECNAVINST 5350.10 (series).

(i) *Reporting suspected violations.* Naval personnel who have information that causes them to believe that other DOD personnel have violated a statute or standard of conduct imposed by this instruction should bring the matter to the attention of the appropriate command authority.

(j) *Resolving violations.* Commanding officers or heads of activities shall promptly resolve standards of conduct violations by one or more measures such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or disciplinary or other appropriate action as provided by statute or administrative procedures.

(k) *Display of the Code of Ethics for Government Service.* Pub. L. 96-303 requires the display of the *Code of Ethics for Government Service* poster in appropriate areas of federally owned or leased office space. Department of the Navy activities shall display the poster at all installations, facilities, and offices. It may also be displayed in lobbies, conference rooms, reception areas, auditoriums, cafeterias, and other high-traffic areas. To obtain copies, submit requisitions in FEDSTRIP format to the appropriate GSA regional office, requesting national stock number (NSW) 7690-01-099-8167.

§ 721.6 Standards of conduct governing naval personnel.

(a) *Affiliations and financial interests.* [Naval personnel shall not engage in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their official positions. For the purpose of this prohibition, the private interests of a spouse, minor child, or household member are treated as private interests of naval personnel.]

(1) Unless otherwise expressly authorized by action taken under 18 U.S.C. 208(b), all naval personnel who have or acquire an affiliation or a financial interest that creates a conflict or appearance of a conflict with their official duties shall report the possibly disqualifying interest to their appropriate supervisor who shall resolve the

matter in accordance with this instruction. If it is determined that the individual should be disqualified from participation in any official activities that are related to the conflicting interest, a formal memorandum of disqualification must be sent to the concerned individual and to any affected immediate subordinate. If the individual cannot adequately perform his or her official duties after such disqualification, he or she must divest himself or herself of such interest or be removed from that position.

(2) Naval personnel need not be disqualified under this section, however, for having one or more of the financial interests or affiliations set forth below. Such holdings are exempted from the provisions of this instruction otherwise pertaining to disqualification, but not disclosure of, such interests and from the provisions and penalties of 18 U.S.C. 208(a) as being too remote or inconsequential to affect the integrity of the services of naval personnel:

(i) Shares of a widely held and diversified mutual, money market, trust, or similar fund offered for sale by a financial institution or by a regulated investment company;

(ii) Deposits in and loans made by banks or other financial institutions, provided they are at customary and generally available terms and conditions;

(iii) Domestic bonds other than corporate bonds, i.e., federal, state, municipal, or local government bonds, regardless of the value of such interest; and

(iv) Interests resulting from holding a position of trust or responsibility in a private, nonprofit association or other organization that fosters and promotes the general interests of the naval service and depends, in part, upon the voluntary efforts of naval personnel acting in their private capacities for leadership. Provided they disclose their relationship with the organization when doing so, naval personnel so serving may, in their official capacities, render advice and make recommendations within the chain of command with respect to particular matters affecting the organization if the final decision is made by higher authority.

(3) Notwithstanding paragraph (a)(2) of this section, the commanding officer or head of the activity to which an individual is assigned who holds an interest described in paragraph (a)(2)(iii) or (a)(2)(iv) of this section may, in his or her discretion, require such individual to refrain from taking any official action affecting the interests of an entity in which the individual holds such an interest, if determined to be in the best interest of the Government. In this regard, see § 721.5 (b) and (g), and § 721.6(j) for ethics considerations other than 18 U.S.C. 208.

(b) *Using inside information.* [Naval personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.]

(c) *Using naval position.* [Naval personnel are prohibited from using their official positions to improperly induce, coerce, or in any other manner improperly influence any person to provide any benefit, financial or otherwise, to themselves or others.]

(d) *Dealing with present and former military and civilian personnel.* [Naval personnel shall not knowingly deal on behalf of the Government with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this instruction, § 721.15 or 5 CFR Part 737.]

(e) *Commercial solicitations by naval personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, [all naval personnel, are prohibited from making commercial solicitations or sales to DOD personnel who are junior in pay grade, or position, at any time or place] (see also SECNAVINST 1740.2 (series)). Commercial sales, whether or not solicited, are prohibited between officer and enlisted military personnel except as specified in paragraph (e)(2) of this section (see U.S. Navy Regulations, 1973, Article 1131).

(1) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and other commodities or goods.

(2) This prohibition is not applicable to the one-time sale, lease, or sublease by an individual of his or her own personal property or privately owned or leased dwelling, or to the off-duty employment of naval personnel as employees in retail stores or other situations not involving solicited sales.

(3) With regard to solicitation by and of civilian personnel, the limitation applies only to solicitation of personnel under the supervision, at any level, of the solicitor.

(f) *Assignment of Reserve personnel for training.* Naval personnel who are responsible for assigning reservists for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(g) *Gratuities.* (1) [Except as provided in paragraph (g)(2) of this section, naval personnel and their spouses, minor children, and members of their households shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from or on behalf of a defense contractor or other entity that:]

(i) [Is engaged in or seeks business or financial relations of any sort with any DOD component;]

(ii) [Conducts operations or activities that are either regulated by a DOD component or significantly affected by DOD decisions; or]

(iii)[Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.]

A foreign government or any agency thereof shall also constitute a defense contractor under this section where it is engaged in selling to the Department of Defense.

(2) This general prohibition does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate ethics official;

(ii) The acceptance of unsolicited advertising or promotional items of nominal intrinsic value such as disposable pens or pencils, note pads, or calendars;

(iii) Unsolicited trophies, entertainment, prizes, or awards given for public service or achievement, or in games or contests that are clearly open to the public or that are officially approved for participation by naval personnel;

(iv) Things available to the public (such as university scholarships covered by DOD Directive 1322.6 and free exhibitions by DOD contractors at public trade fairs);

(v) Discounts or concessions extended and realistically available to all naval personnel within a given metropolitan or regional geographic area;

(vi) Participation by naval personnel in civic and community activities when the involvement of DOD contractors is remote from the business purposes of any contractor who is sponsoring, supporting, or participating in the activity (for example, participation in a little league or Combined Federal Campaign luncheon that is subsidized by a DOD contractor);

(vii) Social activities engaged in by officers in command and other naval officials or their representatives with local civic leaders as part of community relations programs of the Department of the Navy in accordance with SECNAVINST 5720.44 (series);

(viii) The participation of naval personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by institutions of higher learning, industrial, technical, or professional associations (not by individual contractors), provided that, in the case of the associations, their programs have been approved in accordance with DOD Instruction 5410.20. This exception permits acceptance of a luncheon, dinner, or refreshments which are part of the gathering, but does not extend to the acceptance of transportation or overnight accommodations unless authorized under the terms of paragraphs (g)(2) or (h) of this section;

(ix) Situations in which participation by naval personnel at public ceremonial activities of mutual interest to industry or local communities and the Department of the Navy, such as ship launchings, serves the interests of the Government, and acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached. This exception permits attendance at appropriate functions incident to the activity, and mementos of nominal intrinsic value;

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable and the individual reports the circumstances in writing to his or her appropriate supervisor in advance of acceptance or as soon after as possible;

(xi) Attendance at promotional vendor training sessions (such as tuition-free training or refresher courses, seminars, and the like) offered by contractors to facilitate understanding or utilization of their products. Such attendance may be authorized when it is determined to be in the Government's interest by the appropriate supervisor of the individual concerned. Transportation, accommodations, and meals in connection with such training may be accepted only in accordance with paragraph (g)(2)(x) of this section;

(xii) Attendance of naval personnel at gatherings, including social events such as receptions, that are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached or, when there is doubt as to the propriety of acceptance, by higher authority (see SECNAVINST 1650.1 (series) for further information pertaining to gifts from foreign governments);

(xiii) Customary exchanges of gratuities between naval personnel and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where the circumstances make it clear that it is that relationship rather than the business of the persons concerned that is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any entity described in paragraph (g)(1) of this section;

(xiv) Reimbursement in cash or in kind for travel, lodging, or subsistence expenses not extravagant or excessive in nature in connection with seeking other employment. In such cases the individual shall first notify his or her appropriate supervisor in writing and shall disqualify himself or herself from participating on behalf of the Government in any particular matter affecting the interests of the prospective employer. The disqualification may be rescinded only if the individual concerned notifies his or her appropriate supervisor in writing that he or she is no longer seeking or actively considering employment with that prospective employer; and

(xv) Situations in which, in the sound judgment of the individual concerned or his or her appropriate supervisor, the Government's interest will be served by naval personnel participating in activities otherwise prohibited. In any such case a written report of the circumstances shall be made by the individual concerned or his or her appropriate supervisor in advance of acceptance, or, when an advance report is not possible, within 48 hours after acceptance to the appropriate supervisor, if the appropriate supervisor is not otherwise aware of the acceptance, and to the cognizant eithics counselor, as defined in § 721.8(h).

(3) Naval personnel who receive gratuities, or have gratuities received for them in circumstances not in conformance with the standards of this section shall promptly report the circumstances to the appropriate supervisor for a determination as to proper disposition. The appropriate supervisor shall consult with the cognizant eithics counselor, as defined in §721.8(h).

(4) Procedures with respect to NROTC staff members are set forth in DOD Directive 1215.8.

(h) *Receipts in connection with official travel.* (1) The acceptance of transportation, accommodations, meals, or other services furnished in kind in connection with official travel from sources other than those indicated in paragraph (g)(1) of this section may be authorized by the commanding officer or head of activity to which an individual is assigned if determined to be in the overall interest of the Government when the individual concerned is to be a speaker, panelist, project officer, or other bona fide participant in the event attended and if the entity sponsoring the event customarily provides such services to participants. The acceptance of services of this nature may also be authorized under the foregoing conditions in connection with official travel to participate in events such as symposia, seminars, and the like sponsored by institutions of higher learning, or industrial, technical, or professional associations that are engaged in activities directly or indirectly funded by the Department of Defense, and that are, therefore, entities falling within the scope of paragraph (g)(1) of this section when such activities and the official duties of the naval personnel invited to participate in the event are unrelated.

(2) [Except as indicated in paragraph (h)(1) of this section, naval personnel may not accept personal reimbursement from any source for expenses incident to official travel unless authorized by their commanding officer or head of their activity consistent with guidance provided by the appropriate eithics official] (pursuant to 5 U.S.C. 4111 or other authority). Rather, reimbursement must be made to the Government by check payable to the "Treasurer of the United States". Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement for official travel.

(3) When transportation, accommodations, meals, or services in kind are furnished to naval personnel by non-Government sources consistent with paragraph (h) of this section, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable by the Government.

(4) In no case shall naval personnel accept reimbursement either in kind or in cash that is extravagant or excessive in nature.

(i) *Speaking, lecturing, writing, and appearances.* (1) Naval personnel are encouraged to engage in teaching, lecturing, and writing. [Naval personnel (including all Navy and Marine Corps members of both the ready and standby reserve), however, shall not, either with or without compensation, engage in activities that are dependent upon information obtained as a result of their Government employment except when the information has been published or is generally available to the public, or it will be made generally available and the official authorized to release such information gives written authorization for the use of nonpublic information on the basis that its use is in the public interest.]

(2) Unless there is a definite executive branch, Department of Defense, or Department of the Navy position on a matter addressed in the appearance or writing and the individual has been authorized by appropriate superior authorities to present that position officially, he or she shall expressly present his or her views on that matter as his or her own and not as those of the Department of the Navy or Department of Defense.

(3) [Naval personnel may not accept a payment or fee for any appearance or writing unless undertaken as a private citizen and not in an official capacity.] See also paragraph (j) of this section relating to outside employment generally.

(4) Naval personnel may not accept an honorarium exceeding $2,000 (excluding actual travel and subsistence expenses for the individual concerned, and for his or her spouse, or an aide, and fees or commissions paid to agents) for any appearance, lecture, speech, or article, unless disbursed to charitable organizations in accordance with procedures of 2 U.S.C. 441i(b). An honorarium is a gratuitous payment which is not intended as compensation for services.

(5) Civilian presidential appointees assigned to the Department of the Navy whose appointments must be made by and with the advice and consent of the Senate shall not receive compensation (excluding travel and

subsistence expenses not otherwise prohibited by this instruction) or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to naval responsibilities, programs, or operations or that draws substantially from official material that has not become part of the body of public information. Such personnel are also prohibited in any calendar year from having outside earned income exceeding 15 percent of the rate of pay fixed by law as compensation for their services to the Government or as stipulated and agreed to with the Senate Committee on Armed Services as a condition to the confirmation of their appointment by the Senate, whichever is less. See 5 U.S.C. app. 210.

(j) *Outside employment of naval personnel.* (1) [Naval personnel shall not engage in outside employment or any other outside activity with or without compensation that:]

(i) [Interferes with or is not compatible with the performance of their Government duties;]

(ii) [May reasonably be expected to bring discredit upon the Government or the Department of the Navy; or]

(iii) [Is otherwise inconsistent with the requirements of this instruction] including the requirement to avoid actions and situations which reasonably can be expected to create the appearance of a conflict of interest.

(2) Enlisted naval personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974.

(3) Active duty Regular officers of the Navy and Marine Corps, including those on terminal leave, shall not be employed by any person or entity furnishing naval supplies or war materials to the United States. If such an officer is so employed, he or she is not entitled to payment from the United States for the duration of that employment, pursuant to 37 U.S.C. 801(a).

(4) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this instruction. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(k) *Use of civilian and military titles or positions in connection with commercial enterprises.*

(1) [All naval personnel are prohibited from using their grade, rank, title, or position in connection with any commercial enterprise or in endorsing any commercial product.] See also Article 1403, U.S. Navy Uniform Regulations. This does not preclude author identification for materials published in accordance with DOD procedures. A commercial enterprise is any entity that engages in activities that produce income as defined in the Internal Revenue Code of 1954, section 61, and that has not been exempted from paying income taxes pursuant to the Internal Revenue Code of 1954, section 501(a).

(2) All retired military personnel and all members of Reserve components not on active duty are permitted to use their military titles in connection with commercial enterprises, provided that they indicate their inactive Reserve or retired status. If, however, such use of military titles in any way casts discredit upon the Department of the Navy or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Department of the Navy or the Department of Defense, it is prohibited. In addition, commanders of overseas installations may further restrict the use of titles in overseas areas including use by retired military personnel and members of Reserve components not on active duty

(l) *Use of Government facilities, property, and manpower.* [Naval personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of Government manpower, property or facilities of any kind, including property leased to the Government, for other than official government business or purpose.] Naval personnel have a positive duty to protect and conserve Government property. Waste or abuse of any Government asset will not be tolerated. See SECNAVINST 5430.92. These provisions do not preclude the use of Government facilities for approved activities in furtherance of naval community relations, provided they do not interfere with military missions or Government business. See SECNAVINST 5720.44 (series) for community relations guidance.

(m) *Prohibition of contributions or presents to superiors.* [Naval personnel shall not solicit contributions from other DOD personnel for a gift to a superior, make a donation or a gift to a superior, or accept a gift from other DOD personnel subordinate to themselves.] This prohibition does not include voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, promotion, or retirement, provided any gifts acquired with such contributions shall not be extravagant or excessive in nature.

(n) *Gambling, betting, and lotteries.* [While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, naval personnel shall not participate in any gambling activity including a lottery or pool, a game of chance for money or property, or the sale or purchase of a number slip or ticket.] The only exceptions are for activities that have been specifically approved by the Secretary of the Navy.

(o) *Indebtedness.* Naval personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, state, and local taxes), so that their indebtedness does not adversely affect the Government as their employer. The Department of the Navy is not required to determine the validity or amount of disputed debts.

[50 FR 9002, Mar 6 1985 50 FR 15891, Apr 23 1985]

§ 721.7 Related statutes and directives.

Attention is directed to the following related matters governed by other directives:

(a) *Reports of defense related employment.* Certain categories of present naval personnel formerly employed by defense contractors and certain categories of former or retired naval personnel presently employed by defense contractors are required by statute to report their employment, governmental or private. SECNAVINST 5314.5 (series) implements the statutory requirements, provides a form for making the required report (DD Form 1787), and assigns responsibility to commanding officers or heads of activities for ensuring compliance with the filing requirement by affected civilian employees. Failure to file such reports when required may subject individuals to criminal penalties.

(b) *Political activities.* Chapter 733 of the Federal Personnel Manual, article 6210240 of the Naval Military Personnel Manual, and paragraph 1742.3 of the Marine Corps Manual discuss restrictions on political activities of naval personnel. Related statutes are discussed in § 721.15.

(c) *General responsibilities of naval personnel.* Chapter 11 of U.S. Navy Regulations, 1973, prescribes general regulations governing the rights and responsibilities of naval personnel. If any provisions of this instruction is found to conflict with a provision of Navy Regulations, the provision of Navy Regulations shall be controlling.

§ 721.8 Responsibilities for action.

(a) *The General Counsel of the Navy.* The General Counsel of the Navy is assigned overall responsibility for the ethics and standards of conduct program of the Department of the Navy and is appointed as Designated Agency Ethics Official for the Department of the Navy, the duties of which are prescribed in 5 CFR 738.203. Unless a function is specifically reserved or otherwise assigned here, the General Counsel shall act as the designee of the Secretary and for these purposes is empowered to redelegate all such duties to the extent permitted by 5 CFR 738.204.

(b) *Principal Deputy General Counsel of the Navy.* The Principal Deputy General Counsel of the Navy is appointed as the Alternate Designated Agency Ethics Official for the Department of the Navy and shall assume the responsibilities of the Designated Agency Ethics Official in the absence of the General Counsel of the Navy. In the absence of both the General Counsel of the Navy and the Principal Deputy General Counsel of the Navy, the Acting General Counsel of the Navy shall assume the responsibilities of the Designated Agency Ethics Official.

(c) *Navy Department officials.* The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that all naval personnel receive an oral briefing on this instruction upon initial appointment, employment or enlistment. This briefing shall be given at a depth and with an emphasis consistent with the nature of the duties to which such personnel are presently assigned and may be assigned in the foreseeable future. All personnel shall attest in writing to their attendance at the required briefing.

(d) *Commanding officers and heads of activities.* Each individual has a basic responsibility for complying with the requirements of this instruction, but commanding officers and naval personnel exercising command or similar authority have as a leadership/management matter the primary responsibility for ensuring compliance, and they will be held accountable. All commanding officers or heads of commands, bureau, offices, or activities are specifically responsible for the following:

(1) The continuing dissemination of the applicable information in this instruction to all naval personnel within their organizations at least annually in a manner that will ensure familiarity and compliance with the pertinent provisions of this instruction. (This is a continuing requirement and is in addition to the initial briefing required by paragraph (c) of this section);

(2) Providing a copy of this instruction to all naval personnel within their organizations upon request and periodically publishing § 721.18, which is a concise summary of the standards;

(3) The establishment and continuing execution of the requirements, procedures and controls prescribed in § 721.16 to ensure that all naval personnel within their organizations who are required to file reports of their financial circumstances do file them in a timely manner, and that the specified reviews are promptly and carefully made;

(4) Making determinations pursuant to this instruction and 18 U.S.C. 208(b) with respect to disqualification of personnel within their organizations from performing duties in which they have conflicts or apparent conflicts of interest;

(5) Ensuring that Reservists detailed to perform active duty for training in their organizations are assigned duties that will minimize the possibility of obtaining information that could be used by them or their employers to gain an unfair advantage over civilian competitors; and

(6) Receiving and taking prompt and appropriate action on reports concerning violations of this instruction including § 721.15 or related statutes, by personnel within their organizations.

(7) Ensuring that prospective retirees are briefed concerning post-employment requirements and restrictions, as discussed in § 721.12, § 721.15, 5 CFR Part 737, and NAVSO P-1778.

(e) *Inspector General.* The Naval Inspector General and the Inspector General of the Marine Corps shall ensure that periodic administrative inspections of organizations under their cognizance routinely include inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(f) *Auditor General.* The Auditor General of the Navy shall ensure that the Naval Audit Service audit program routinely includes inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(g) *Deputy ethics officials.* The Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), and the Assistant General Counsel of the Navy (Ethics) are appointed as deputy ethics officials and are delegated authority to act for the General Counsel. They shall be responsible for all ethics and standards of conduct functions within their respective areas of jurisdiction including, but not limited to, advice and proper review of all ethics and standards of conduct problems and for finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF-278's), except that the General Counsel shall perform all standards of conduct functions pertaining to civilian presidential appointees assigned to the Department of the Navy.

(h) *Ethics counselors.* Ethics counselors have been delegated authority for initially reviewing Financial Disclosure Reports (SF-278) and for finally reviewing Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area. In addition, they shall be responsible for providing advice and assistance on matters relating to ethics, standards of conduct, and conflicts of interest under this instruction. Specific appointments of ethics counselors are contained in § 721.16. Other ethics counselors may be appointed by the General Counsel, the Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), or the Assistant General Counsel (Ethics).

(i) *Additional duties of senior officials.* The Commandant of the Marine Corps and the Chief of Naval Material, as appropriate, are responsible for bringing the contents of this instruction to the attention of the principal officers of each contractor doing significant business with the Department of the Navy. Chiefs and heads of commands, bureaus, and offices, commanding officers, and other senior officials shall periodically utilize the opportunity afforded by conferences with representatives of industry to direct attention to the regulations and policies set forth in this instruction.

§ 721.9 Personal financial disclosure.

The Department of the Navy maintains two separate and distinct financial disclosure reporting systems utilizing either DD Form 1555 or Standard Form 278. § 721.16 contains the detailed procedures and standards for the submission, review and custody of reports by affected naval personnel of their financial circumstances under both systems. Individuals required to file the SF-278 are not required to file DD Form 1555.

§ 721.10 Post employment restrictions.

Statutory and regulatory restrictions upon the activities of former or retired naval personnel are discussed in § 721.15 of this part and 5 CFR 737.

§ 727.11 Administrative enforcement of 18 U.S.C. 207.

A provision of the Ethics in Government Act of 1978, as amended (18 U.S.C. 207(j)), requires that each agency establish administrative procedures for the enforcement of the post employment restrictions imposed by 18 U.S.C. 207 (a)-(c). The procedures established for the Department of the Navy are contained in § 721.17. They provide that any former officer or employee, after opportunity to be heard, who is found to have violated any such restriction may be barred from engaging in business with the Department of the Navy for a period of up to five years. The implementing Office of Personnel Management Regulations are contained in 5 CFR Part 737.

[50 FR 9006, Mar. 6, 1985; 50 FR 15891, Apr. 23, 1985]

§ 721.12 Reporting of post-retirement employment.

(a) Each retired Regular officer of the Navy and Marine Corps shall keep the Department of the Navy advised of his or her postretirement employment activities. All retired Regular officers whose names have been on the retired list for three years or less shall file a statement of employment [DD FORM 1357]. All retired Regular officers whose names have been on the retired list for over three years are encouraged to use DD Form 1357 to report their postretirement employment activities. In any event, officers whose names have been on the retired list for more than three years shall, at a minimum, keep the Department of the Navy advised as to whether they are employed by any agency, instrumentality, or department of the United States, and, if so, the position title and employing agency. Each Regular officer retiring hereafter shall file this statement within 30 days after retirement. Whenever the information reported changes, each such officer shall make an appropriate report within 30 days of that change. The Comptroller of the Navy (for Regular Navy officers) and the Commandant of the Marine Corps (for Regular Marine Corps officers) shall advise each officer required to file of the continuing need to report postretirement employment activities as set forth above.

(b) To determine compliance with 37 U.S.C. 801(b) and 5 U.S.C. 5532, reports of postretirement employment shall be submitted:

(1) In the case of a retired Regular Navy officer, to the Commanding Officer, Navy Finance Center (Retired Pay Division), Cleveland, OH 44199; or

(2) In the case of a retired Regular Marine Corps officer, to the Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197.

(c) If an apparent violation of law or regulation is noted upon review of a report of postretirement employment, a copy of the report shall be transmitted to the Commander, Navy Accounting and Finance Center, or Commandant of the Marine Corps (Code FD), for appropriate action.

(d) The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall provide each Regular officer retiring hereafter, as part of the retirement check-out procedures, with clear instructions concerning the requirement under this instruction to report postretirement employment. These instructions should be combined, where applicable, with the instructions prescribed in SECNAVINST 5314.5A concerning the possible additional requirement to file reports of DOD and defense-related employment (DD Form 1787).

§ 721.13 Delegation of authority.

The General Counsel of the Navy is authorized to modify or supplement §§ 721.15, 721.16, and 721.17 of this instruction in a manner consistent with the policies set forth herein.

§ 721.14 Reports and forms.

(a) Symbol DD-SECNAV 5370-1 has been assigned to the Statement of Affiliations and Financial Interests Report submitted on form DD 1555. Symbol SECNAV 5370-2 has been assigned to the Financial Disclosure Report submitted on form SF 278.

(b) Forms are available as indicated: (1) DD 1357, Statement of Employment (Regular Retired Officers), from Commanding Officer, Navy Finance Center, Cleveland, Ohio 44199; (2) DD 1555, Confidential Statement of Affiliations and Financial Interests (DOD Personnel), stock number 0102-LF-001-550, from Ethics Counselor or through normal channels in accordance with NAVSUP P-2002; (3) DD 1787, Report of DOD and Defense Related Employment, stock number 0102LF-025-5090, from Ethics Counselor or through normal supply channels in accordance with NAVSUP F-2002; (4) OPM 1401, Request to Inspect or Review copies of SF 278, Financial Disclosure Report, from Ethics Counselor; (5) SF 278, Executive Personnel Financial Disclosure Report, stock number 7540-01-070-8444, from Ethics Counselor or Local GSA Stores.

[50 FR 9007, Mar. 6, 1985; 50 FR 15892, Apr. 23, 1985]

§ 721.15 Digest of laws.

(a) *Conflict of interest laws applicable to present officers and employees*—(1) *18 U.S.C. 203.* This statute prohibits a Government employee from soliciting or receiving compensation for a representation by himself or another before any federal agency while he is a Government employee.

(2) *18 U.S.C. 205.* (i) This statute prohibits Government personnel from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(ii) The following exemptions are allowed:

(A) 18 U.S.C. 205 does not prevent Government personnel from giving testimony under oath or making statements required to be made under penalty of perjury or contempt or from representing another person, without compensation, in a disciplinary, loyalty, or other personnel matter.

(B) 18 U.S.C. 205 also authorizes a limited waiver of its restrictions and those of 18 U.S.C. 203 for the benefit of an officer or employee, including a special Government employee, who represents his or her own parents, spouse, or child, or a person or estate he or she served as a fiduciary. The waiver is available only if approved by the official making appointments to the position. In no event does the waiver extend to representation of any such person in matters in which the employee has participated personally and substantially or that, even in the absence of such participation, are the subject of his or her official responsibility.

(C) Finally, 18 U.S.C. 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the FEDERAL REGISTER that the national interest requires such representation.

(3) *18 U.S.C. 208.* (i) Subsection (a) of 18 U.S.C. 208 requires executive branch personnel to refrain from participating in an official capacity in any particular matter in which they, their spouses, minor children, or partners have financial interests. It also prohibits such participation in particular matters in which businesses or nonprofit organizations with which such personnel are connected or are seeking employment have financial interests. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his or her Government action, or the decision in which he or she participates or with respect to which he or she advises, will have a direct and predictable effect upon such financial interests.

(ii) Subsection (b) of 18 U.S.C. 208 permits agencies to grant an ad hoc exemption from subsection (a) of the statute if the outside financial interest is deemed not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

(4) *18 U.S.C 209.* Subsection (a) of 18 U.S.C. 209 prevents executive branch personnel from receiving, and anyone from paying them, any salary or supplementation of salary from a private source as compensation for their Government service. Subsection (b) of the statute permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) of this statute exempts special Government employees and anyone serving the Government without compensation. Subsection (d) of the statute exempts contributions, awards, or other expenses under the Government Employees Training Act (5 U.S.C. 4101-18).

(5) *37 U.S.C. 801(a).* A Regular Navy or Regular Marine Corps officer on active duty (including terminal leave) may not be employed by anyone furnishing naval supplies or war materials to the United States. If such an officer is so employed he or she is not entitled to any payment from the United States during that employment.

(b) *Conflict of interest laws applicable to former Government officers and employees*—(1) *18 U.S.C. 203.* This statute makes it a criminal offense for a former Government employee to share in any fees rendered as compensation for representation before any Government agency in relation to a particular matter in which the United States is a party or has a direct and substantial interest, regardless of whether it was before the agency of which the individual is a former employee during the period of his or her Government service. It covers compensation received only in connection with actual or constructive appearances before an agency. This section does not apply to former Government employees who receive a fixed salary, as opposed to a share of profits, as compensation for their services. It is of concern primarily to professional employees who leave Government service to join an existing partnership.

(2) *18 U.S.C. 207(a) and (b)(i), applicable to all former Government officers and employees.* (i) Subsection (a)

of 18 U.S.C. 207 permanently bars a former officer or employee from acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is interested and in which the individual participated personally and substantially in his or her governmental capacity. Subsection (a) similarly bars written or oral communications to the Government or its employees with regard to such matters. The legislative history of this provision makes it clear that it does not preclude post employment activities that may be characterized as rendering aid or assistance but not as acting in a representational capacity. Thus, it does not prohibit a former officer or employee from doing in-house work for an organization under a Government contract or grant that he or she negotiated on behalf of the Government, so long as the former officer or employee does not represent the organization in any dealings, formal or informal, with the Government or its employees relating to that contract or grant. In addition, the phrase "involving a specific party or parties" is interpreted as limiting the particular matters in which the former Government employee may not participate to those specific proceedings, generally adversarial in nature, that affect the legal rights of the parties involved. A former Government officer or employee, therefore, would not be barred by subsection (a) from acting as agent or attorney in connection with a particular matter governed by general rules or policies that he or she had a role in establishing, so long as the particular matter itself was not one in which he or she had participated as a Government officer or employee.

(ii) Subsection (b)(i) of 18 U.S.C. 207, as revised by the Ethics in Government Act, imposes a two-year ban against representational activities identical to those covered by subsection (a) of the statute as to all particular matters that were actually pending under the former officer's or employee's official responsibility during his or her last year of Government service, but in which the employee was not personally and substantially involved.

(iii) Past participation in, or official responsibility for, general rule making, the formulation of general policy or standards, or other similar matters does not preclude representational activities. Similarly, in the scientific field, past participation in discussions of scientific or engineering concepts, the feasibility of scientific or technical accomplishments, or proposed Government programs in their early stages, prior to the formulation of a contract or a contract proposal where specific parties become involved in a matter, does not disqualify former Government personnel from representation with respect to a contract entered into at a later time even though the same general scientific matters may be involved in such a contract.

(iv) *Exemptions under 18 U.S.C. 207.* Former officers or employees may be exempted from the restrictions of Section 207 if the Secretary, in consultation with the Director, Office of Government Ethics, executes a certification published in the FEDERAL REGISTER finding that (A) the former officer or employee possesses outstanding qualifications in a scientific, technological, or other technical discipline, (B) the former officer or employee would be acting with respect to a particular matter requiring such qualifications, and (C) to do so would serve the national interest.

(v) *Implementing regulations.* The complete text of the Office of Personnel Management Regulations implementing 18 U.S.C. 207 (as revised by the Ethics in Government Act) are contained in 5 CFR Part 737. These regulations apply to the extent specified therein to all former Government employees who left Government service after June 30, 1979.

(3) *18 U.S.C 207(b)(ii) and (c), applicable to former "senior" Government officers and employees.* (i) "Senior employees" are Federal officers or employees who are (A) in positions at Levels I through V of the Executive Schedule, (B) active duty commissioned officers assigned to pay grade O-9 or above, and (C) other flag and general officers and members of the Senior Executive Service in "senior" positions designated by the Director, Office of Government Ethics. For a

position to have been so designated, it must have been determined that it involves "significant decision-making or supervisory responsibility." Further, the position must be in the Senior Executive Service or have a basic rate of pay at least equal to GS-17, step 1, or be at military pay grades O-7 or O-8.

(ii) Subsection (b)(ii) of this statute bars former senior employees, for a period of two years after terminating their employment, from assisting in the representation of another person by "personal presence" at an "appearance" before the United States in connection with any particular matter in which the former senior employee could not act as the person's actual representative because of his or her personal and substantial participation in the matter while in Government service. This provision is designed to prevent a former senior employee from appearing to lend personal influence in the resolution of a matter in which he or she was previously personally and substantially involved, simply by being there. A violation of this subsection might occur when the topic of conversation during an appearance shifts from one in which the former senior employee *was not* personally and substantially involved to one in which he or she *was* so involved and when such a shift was likely. The subsection does not, however, bar assisting in the preparation for negotiations, hearings, and similar transactions, so long as such assistance occurs in a context not involving the personal presence of the former senior employee at an appearance before the Government.

(iii) Subsection (c) of this statute precludes a former senior Government employee, for a period of one year after terminating his or her employment, from representing anyone vis-a-vis his former agency (the Department of the Navy) or its officers or employees, whether by formal or informal appearance, or by written or oral communications intended to influence the former employing agency. This restriction pertains to all particular matters regardless of prior involvement, and without regard to whether or not a specific party is involved, if the matter is one that is pending before the agency, or if it is one in which the agency has a direct and substantial interest.

(iv) Subsection (c) of this statute further precludes attempts to influence rule making or policy formulation, since the matters covered need not involve specific parties, and also includes self-representation. It is limited to contacts with the employing agency, however; the former senior employee may appear before, or attempt to influence any other part of Government if not otherwise precluded by subsections (a), (b)(i) or (b)(ii). There are, furthermore, a number of exceptions to the restriction such as (A) purely social or informational communications, (B) transmission of filings that do not require governmental action, (C) personal matters, (D) self-representation in connection with a judicial or administrative proceeding to which the former senior employee is an involuntary party, (E) expressions of personal views where the former employee has no direct or distinctive indirect pecuniary interest, (F) responses to requests to the former employee for information by the former agency, and (G) participation as the principal researcher or investigator under Government grants.

(v) In addition to the foregoing exceptions, regarding (A) former senior employees who become elected officials of state or local governments, or (B) former senior employees whose subsequent principal occupation or employment is with a state or local government, with an institution of higher education, or with a hospital or medical research organization, the restriction contained in subsection (c) of this statute does not apply to appearances, communications, or other representation on behalf of such government, institution, hospital, or organization.

(c) *Summary of laws particularly applicable to retired Regular officers.*

(1) Prohibited activities. (i) *Claims.* A retired Regular officer of the Armed Forces may not, within two years of retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in

such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves the military department in whose service he or she holds a retired status. Nor may a Regular retired officer at any time act as an agent or attorney for prosecuting any claim against the Government, or assist in prosecution of such claim, or receive any gratuity, or any share of or interest in such claim in consideration for having assisted in the prosecution of such claim, if the claim involves any subject matter with which he or she was directly connected while on active duty (see 18 U.S.C. 283).

(ii) *Selling.* (A) A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the military department in whose service he or she holds a retired status (see 18 U.S.C. 281).

(B) Payment may not be made from any appropriation to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of three years after his or her name is placed on that list, if that officer is engaged for himself, herself, or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service [see 37 U.S.C. 801(b)].

(C) For the purposes of 37 U.S.C. 801(b), "selling" means:

(*1*) Signing a bid, proposal, or contract;

(*2*) Negotiating a contract;

(*3*) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(*a*) Obtaining or negotiating contracts,

(*b*) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or

(*c*) Settling disputes concerning performance of a contract: or

(*4*) Any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract therefor is subsequently negotiated by another person.

(iii) Neither these statutes nor this instruction preclude a retired Regular officer from accepting employment with private industry solely because his or her employer is a contractor with the Government.

(d) *Other laws applicable to present or former DOD personnel.* (1) There are legal prohibitions concerning the following activities which may subject present and former DOD personnel to criminal or other penalties:

(i) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201).

(ii) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

(iii) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371).

(iv) Lobbying with appropriated funds (see 18 U.S.C. 1913).

(v) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918).

(vi) Disclosure of classified information (see 18 U.S.C. 798, 50 U.S.C. 783); and disclosure of confidential information (see 18 U.S.C. 1905).

(vii) Habitual use of intoxicants to excess (see 5 U.S.C. 7352).

(viii) Misuse of a Government vehicle (see 31 U.S.C. 1349).

(ix) Misuse of the franking privilege (see 18 U.S.C. 1719).

(x) Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917).

(xi) Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001).

(xii) Mutilating or destroying a public record (see 18 U.S.C. 2071).

(xiii) Counterfeiting and forging transportation requests (see 18 U.S.C. 508).

(xiv) Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her Government employment (see 18 U.S.C. 654).

(xv) Unauthorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285).

(xvi) Certain political activities (see 5 U.S.C. 7321-27 and 18 U.S.C. 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel.

(xvii) Any person who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to (A) Reservists who are not on active duty or who are on active duty for training, or (B) a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

(xviii) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351).

(xix) Acceptance of excessive honoraria [see 2 U.S.C. 441 (i)].

(xx) Acceptance, without statutory authority, of any office or title, of any kind whatever, from any king, prince, or foreign state by any person holding any office of profit or trust of the Federal Government, including all retired military personnel. (U.S. Const. Art. I, section 8).

(xxi) Civilian presidential appointees occupying full-time positions, appointment to which are required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year that is in excess of 15 percent of their Government salary (see 5 U.S.C. app. 210).

(xxii) Commission of prohibited personnel practices (see 5 U.S.C. 2302).

(xxiii) Acceptance of gifts and decorations (awards) from foreign governments or agents and representatives thereof (5 U.S.C. 7342).

[50 FR 9007, Mar. 6, 1985; 50 FR 15892, Apr. 23, 1985]

§ 721.16 Submission and processing of reports of financial circumstances (SF-278 and DD Form 1555).

(a) *Purpose.* This section implements the requirement and contains the procedures and standards for the submission, review and custody of Financial Disclosure Reports (SF-278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) within the Department of the Navy and identifies those who must file such reports.

(b) *Standards for review of reports of financial circumstances (SF-278 and DD Form 1555).* Each reviewing official shall review each report or statement submitted to determine that:

(1) All items are completed. For SF-278's, see Title II of the Ethics in Government Act of 1978, 5 U.S.C. app. 201 et seq., and the Office of Personnel Management regulations promulgated thereunder, 5 CFR Part 734.

(2) No interest or position is disclosed that violates or appears to violate:

(i) Any applicable provision of law contained in § 721.15; and

(ii) The provisions of this instruction.

(3) A reviewing official shall not sign and date a statement of financial circumstances until the foregoing determination has been made.

(c) *Deputy ethics officials.* Incumbents of the following positions have been appointed deputy ethics officials and have been delegated authority by the General Counsel of the Navy to act for the General Counsel in finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF-278) and in resolving issues referred to them by commanding officers, other heads of activities or ethics counselors with regard to Confidential Statements of Affiliations and Financial Interests (DD Form 1555): The Judge Advocate General, with respect to Navy officers;

The Director, Judge Advocate Division (Headquarters Marine Corps), with respect to Marine Corps officers; and The Assistant General Counsel (Ethics), with respect to civilian employees other than presidential appointees. In exercising this authority they shall comply with applicable statutes, regulations published by the Office of Personnel Management, and additional guidance issued by the Office of Goverment Ethics or the General Counsel.

(d) *Ethics counselors.* Incumbents of the following positions have been designated ethics counselors and have been delegated authority to initially review Financial Disclosure Reports (SF-278) and to finally review Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area: Counsel for the Comptroller of the Navy; Counsel for the Systems and Facilities Engineering Commands; Counsel for the Military Sealift Command; Counsel for the Office of Naval Research; Counsel for the Naval Data Automation Command; Counsel in charge of Office of the General Counsel field and branch offices; Counsel for the Commandant of the Marine Corps; Deputy Judge Advocate General and Assistant Judge Advocates General; Deputy Assistant Judge Advocate General (Civil Affairs); Special Counsel to the Chief of Naval Operations (OP-OOJ); Assistant for Legal and Legislative Matters, Office of the Chief of Naval Operations (OP-09BL); Special Assistant for Law, Office of the Naval Inspector General (OP-008F); Legal Advisor to the Deputy Chief of Naval Operations (Plans, Policy and Operations) (OP-616B); Special Assistant for Medico-Legal Affairs to the Director of Naval Medicine/Surgeon General; Special Assistant for Legal Support to the Commander, Naval Medical Command; Legal Counsel, Naval Military Personnel Command; Staff and force judge advocates on the staffs of all commands having general courtmartial convening authority; Commanding officers of Naval Legal Service Offices; and Other ethics counselors who may hereafter be so designated by the General Counsel, the Assistant General Counsel (Ethics), the Judge Advocate General, or the Director, Judge Advocate Division (Headquarters Marine Corps).

(e) *Naval executive personnel.* The term "naval executive personnel" includes those naval personnel whose rank or position places them in one of the following categories:

(1) Civilian presidential appointees;

(2) Regular Navy and Marine Corps officers who have been appointed (with dates of rank) to grade O-7 or above;

(3) Reserve Navy and Marine Corps officers, serving on voluntary extended active duty in excess of 130 days, who have been appointed (with dates of rank) to grade 0-7 or above;

(4) Reserve officers, serving as special Government employees, i.e., on active duty for training, in excess of 60 days in any calendar year and whose basic rate of pay is equal to or exceeds the uncapped rate of basic pay fixed for GS-16, step 1;

(5) Members of the Senior Executive Service;

(6) Other civilian employees, including special Government employees, whose positions are classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332 (which excludes career civilian employees whose positions are classified at or below GS/GM-15) or whose rate of basic pay is fixed other than under the General Schedule at a rate equal to or greater than the uncapped rate of basic pay fixed for GS-16;

(7) Civilian employees who are not members of the Senior Executive Service but who are detailed to a Senior Executive Service position for more than 60 days in any calendar year; and

(8) Employees in the excepted service in positions which are of a confidential or policy-making character unless they have been excluded by the Director, Office of Government Ethics. See Chapter 213 of the Federal Personnel Manual and 5 CFR 734.203.

(f) *Nomination reports (SF-278).* Within five days of transmittal by the President to the Senator of a nomination of an individual to a civilian position, appointment to which requires the advice and consent of the Senate, the individual so nominated shall submit an SF-278 directly to the General Counsel of the Navy. The report shall contain the information prescribed in the "Instructions" attached to the SF-278. These reports shall be certified personally by the General Counsel as Designated Agency Ethics Official, or in his or her absence by the Alternate Designated Agency Ethics Official, and thereupon processed as prescribed in 5 CFR 734.604(c) Nomination reports are not required of military officers nominated for promotion to 0-7 or 0-8 level flag or general officer grades.

(g) *Special reviewing requirement in the case of 0-9 and 0-10 level flag and general officer nominees.* As part of the process for approving nominees for appointment to 0-9 and 0-10 level flag or general officer positions, the Secretary of the Navy must ensure that the nominee has a current SF-278 on file and that the form has been reviewed in relation to the position for which he or she is being considered. Further, the Secretary of the Navy is required to cause a review of all relevant systems of records maintained by the Department of the Navy, including investigative files, to determine if there is any evidence that the nominee has violated the standards of conduct. Each such nomination forwarded to the Secretary of Defense must be accompanied by a certification of the Secretary of the Navy that the required review has been conducted and that the review has or has not disclosed a violation of the standards of conduct.

(h) *New entrant reports (SF-278).* Within 30 days of first assuming a naval-executive-personnel rank or position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. The report shall contain that information prescribed for new entrant reports in the "Instructions" attached to the SF-278. No such report is necessary if the reporting individual has left another position requiring the submission of an SF-278 within 30 days prior to assumption of the new position, or has submitted an SF-278 as a nominee for the new position within 30 days of assuming it. As special Government employees, Reserve officers (as defined in paragraph (e)(4) of this section) commencing active duty for training are initially exempt from this reporting requirement. If, however, such an officer performs active duty for training in excess of 60 days in a calendar year, whether or not in a pay status, a report shall be filed within 15 days after serving the sixty-first day. New entrant reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports (see paragraph (i) of this section).

(i) *Annual Financial Disclosure Report (SF-278).*

(1) *Execution and signature.* At any time after 1 January, but not later than 1 May, naval executive personnel who served as such for more than 60 days during the preceding calendar year shall submit an annual Financial Disclosure Report. These reports are to be completed in accordance with the "Instructions for Completing SF-278" attached thereto. Even though no changes have occurred since the last filing of an SF-278, a complete report is required for each calendar year. Military officers newly promoted to the grade of O-7 and having dates of rank after 1 November of the preceding calendar year need not file an annual report. Their attention, however, is directed to paragraph (h) of this section.

(2) *Submission.* (i) SF-278's shall be submitted as follows:

(A) Civilian presidential appointees, to the General Counsel of the Navy;

(B) Other naval executive personnel assigned to positions within the Department of the Navy, to their appropriate supervisor for review and forwarding;

(C) Navy and Marine Corps officers serving in the various Defense agencies (e.g., DNA, DCA, DMA, DLA, DIA), or in the Central Intelligence Agency, to the Designated Agency Ethics Officials of those agencies;

(D) Navy and Marine Corps officers serving in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, National Security Council, National Aeronautics and Space Administration, or in other assignments outside of the Department of the Navy not specifically mentioned in this paragraph, via their appropriate supervisor, to the Director for Personnel and Security, Washington Headquarters Services (OSD); and

(E) Navy and Marine Corps officers serving in joint, unified or specified commands, through their superiors for processing in accordance with procedures adopted by the unified, specified, or joint commander.

(ii) Naval executive personnel who are double or triple "natted" shall meet the filing requirements of each position independently of the other.

(3) *Initial action by appropriate supervisor.* When a report is submitted, the appropriate supervisor shall attach to the report an unclassified copy of the official position description and thereupon forward both documents to the cognizant ethics counselor.

(4) *Ethics counselor*—(i) *Review.* The ethics counselor shall review the report in accordance with the standards set forth in paragraph B. Ethics counselors need not audit reports to ascertain whether the facts reported therein are accurate. They may be taken at face value unless there is an apparent omission or ambiguity, or the ethics counselor has independent knowledge of matters at variance with the report.

(ii) *Disposition by ethics counselor.* (A) If the ethics counselor concludes that no actual or apparent violation of law or regulation is disclosed, he or she shall enter the following endorsement in the "Comments" section of page 1 of the report: "The information contained in this report discloses no conflict of interest under applicable laws and regulations." The ethics counselor shall thereupon date and sign the report with full name, command or activity, and the title "Ethics Counselor," and forward it to the cognizant deputy ethics official.

(B) If the ethics counselor concludes that no violation is disclosed but that the reporting individual has a direct or indirect financial interest or affiliation which, given other circumstances or different duties and responsibilities within the Department, might give rise to a conflict of interest, he or she shall issue a memorandum of caution to the reporting individual. One copy of the memorandum of caution shall be delivered to the appropriate supervisor and a second copy attached to the SF-278. Thereafter, the ethics counselor shall endorse and forward the report in the manner provided in paragraph (i)(4) (ii)(A) of this section.

(C) If the ethics counselor concludes that the information contained in the report discloses an actual or apparent violation of applicable law or regulation, he or she shall so state by making an appropriate endorsement on page 1 of the report and return the report to the appropriate supervisor.

(5) *Appropriate supervisor review.* If an ethics counselor returns to an appropriate supervisor an SF-278 containing an endorsement indicating an actual or apparent conflict of interest, the appropriate supervisor shall review the report in accordance with the standards set forth in paragraph (b) of this section.

(i) If the appropriate supervisor concludes that no actual or apparent conflict of interest is disclosed, he or she shall endorse, date, sign, and return the report to the ethics counselor. If the ethics counselor agrees with the conclusion of the appropriate supervisor, he or she shall forward the report to the cognizant deputy ethics official, noting concurrence. Otherwise, the matter shall be referred to higher authority within the command or activity for resolution, and the report, noting that resolution is pending, shall be forwarded to the cognizant deputy ethics official.

(ii) If the appropriate supervisor concludes that an actual or apparent conflict is disclosed, he or she shall issue a memorandum of disqualification to the reporting individual. One copy of the memorandum shall be delivered to the ethics counselor and a second copy attached to the SF-278. The appropriate supervisor shall endorse and forward the report to the cognizant deputy ethics official noting the disqualification in the endorsement.

(6) *Time limits for review and disposition.* Action by the ethics counselor and, if required, the appropriate supervisor, must be completed and the

report forwarded to the cognizant deputy ethics official within 15 days of submission but not later than 15 May. If necessary to provide sufficient time to accomplish the required review, commanding officers and heads of activities may require subordinate naval executive personnel to submit their SF-278's prior to 1 May. When a filing extension has been granted in accordance with the procedures of paragraph (k) of this section and a report is received after 1 May, review shall be completed and the report forwarded no later than 15 days after the report is received by the appropriate supervisor.

(j) *Termination reports (SF-278).* Within thirty days after termination of employment from a naval-executive-personnel position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination of employment. A termination report is not required of an individual who, within 30 days of such termination, assumes another position requiring the submission of an SF-278. Termination reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports.

(k) *Extension of filing deadlines (SF-278).* (1) The General Counsel, in the case of civilian presidential appointees, and the cognizant deputy ethics official in other cases (the cognizant Designated Agency Ethics Official in the case of those flag officers serving in entities identified in paragraphs (i)(2), (i)(3,) and (5) of this section, may grant, for good cause, a filing extension of up to 45 days. All requests for extensions shall be submitted in writing to the cognizant official. A copy shall be provided concurrently to the appropriate supervisor and cognizant ethics counselor. The request shall contain a clear statement of the reasons for the request and shall be submitted well in advance of the original filing deadline. The Director, Office of Government Ethics may grant a further extension of up to 45 days. Requests necessitating such a further extension of time shall be forwarded by the cognizant official, with his or her comments attached thereto, to the Director, Office of Government Ethics.

(2) Reporting individuals who anticipate termination of their employment on or before 1 September of any given calendar year may request an extension from the cognizant official of up to 90 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment but not later than 30 July. No further report is required unless a reportable event occurs between the dates of filing and termination of employment.

(l) *Special instructions (SF-278).* (1) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that by 10 January of each year, the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices a list of the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file an annual Financial Disclosure Report (SF-278) pursuant to paragraph (i) of this section. They shall similarly ensure that the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file new entrant or termination Financial Disclosure Reports pursuant to paragraphs (h) and (j) of this section. This information shall be provided immediately upon the appointment of such personnel to a naval-executive-personnel position or upon receipt of an SF-52 requesting approval of the reitrement, resignation, or removal of an individual from such a position. Copies of these lists shall also be provided concurrently to the Assistant General Counsel (Ethics).

(2) Commanding officers or heads of activities shall provide timely, written notification and an SF-278, individual-

ly, to all civilian naval executive personnel under their cognizance whenever such personnel are required to file a new entrant, annual, or termination Financial Disclosure Report and shall ensure that all such reports are timely filed. They shall further provide to the Assistant General Counsel (Ethics) for appropriate action the names and addresses of all civilian naval executive personnel who continue to fail to submit any such report for more than thirty days after the required date of filing. See paragraph (m) of this section.

(3) The Judge Advocate General or the Director, Judge Advocate Division (Headquarters Marine Corps), as appropriate, shall provide timely, written notification and an SF-278, individually, to all flag and general officers whenever they are required to submit a new entrant, annual, or termination Financial Disclosure Report.

(4) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that agreements with other DOD components and Government agencies involving detailing of Department of the Navy executive personnel contain a requirement that the other DOD component or Government agency shall forward to the cognizant Navy deputy ethics official a copy of the detailed individual's finally reviewed Financial Disclosure Reports, including a statement as to the resolution of any conflict or apparent conflict of interests indicated.

(m) Penalty for failure to file SF-278. In addition to sanctions otherwise provided by law or regulation, the Ethics in Government Act of 1978 provides for a fine of up to $5,000 for anyone who knowingly falsifies or willfully fails to file an SF-278.

(n) *Availability of SF-278.* Supplies of SF-278 are available from ethics counselors and GSA Supply Distribution Facilities under Stock Number 7540-01-070-8444.

(o) *Confidential Statements of Affiliations and Financial Interests (DD Form 1555)*—(1) *Personnel required to file.* The following naval personnel, except those required to file SF-278, are required to submit initial and annual Confidential Statements of Affiliations and Financial Interests (DD Form 1555):

(i) Regular Navy and Marine Corps officers frocked to 0-7, and Reserve Navy and Marine Corps officers frocked to 0-7 serving on voluntary extended active duty in excess of 130 days;

(ii) Commanding officers or heads of, and executive officers or deputy heads of:

(A) Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel regularly attached but excluding personnel attached for duty under instruction); and

(B) All Marine Corps bases and air stations;

(iii) Civilian personnel classified at GS-13 or above, or whose positions are classified at a comparable rate of pay under other authority, and military personnel in grades 0-5 and 0-6, when it is determined by the commanding officer or head of the activity that the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any nonfederal entity. Included, among others, are persons who, as part of their basic duties, sign, negotiate, recommend, or approve contracts, or other procurement actions and those who, as part of their basic duties, are engaged in auditing activities, including supervising others who are engaged in auditing activities or participating in the development of policies and procedures for performing audits;

(iv) Other civilian and military personnel of lesser rank or grade, if their commanding officer or head of activity determines that their responsibilities are comparable to those set forth in subparagraph (o)(1)(iii) of this section;

(v) Special Government employees, except those in the following categories (who may, in any case, be required to submit statements when specifically requested to do so by their appropriate supervisor):

(A) Special Government employees, other than members of advisory committees, who are not a "consultant" or "expert" as those terms are defined in Chapter 304 of the *Federal Personnel Manual;*

(B) Physicians, dentists, and allied medical specialists engaged only in providing service to patients;

(C) Veterinarians providing only veterinary services;

(D) Lecturers participating only in educational activities;

(E) Chaplains performing only religious services;

(F) Individuals in the motion picture and television fields who are utilized only as in DOD productions;

(G) Members of selection panels for NROTC candidates;

(H) Reserve officers on active duty solely for training.

(2) *Time of submission*—(i) *Initial statement.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor within 30 days of assuming duties requiring the submission of such statements. The information shall be current as of the filing date. Upon transfer or reassignment from one position to another for which the filing of a statement is required, individuals shall submit a current statement to the appropriate supervisor of their new position.

(ii) *Annual statements.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor by 31 October of each year, with information current as of 30 September of that year. Even though no changes have occurred since the last filing, a complete statement is required.

(iii) *Extension of filing deadline.* When required by reason of duty assignment, infirmity, or other good cause, an appropriate supervisor, with the concurrence of the cognizant ethics counselor, may grant an extension of the filing deadline, not to exceed 45 days. Any annual statement filed after 31 October shall include an appropriate notation as to whether any extension of the filing deadline has been granted.

(p) *Review and disposition of DD Form 1555*—(1) *Review.* Upon receipt of a Confidential Statement of Affiliations and Financial Interests, the appropriate supervisor shall review the statement in accordance with the standards set forth in paragraph (b) of this section, record his or her evaluation in the appropriate block on the form, and forward it to the cognizant ethics counselor for further review. If the ethics counselor agrees with the supervisor's evaluation, he or she shall note concurrence on the statement and return it to the appropriate supervisor for disposition in accordance with paragraph (p)(2) below. If the ethics counselor disagrees with the supervisor's evaluation, he or she shall forward a recommendation for appropriate resolution to the reporting individual's commanding officer or head of activity for implementation. If the commanding officer or head of activity disagrees with the recommendation of the ethics counselor and resolution of the matter is not achieved, the commanding officer or head of activity shall append his or her comments and recommendations to the record and forward the matter to the cognizant deputy ethics official who shall render a final decision. Local review and resolution of conflicts or apparent conflicts of interest disclosed in annual statements shall be accomplished by 30 November of each year and within 30 days after filing in cases where an extension has been granted and in the case of initial reports.

(2) *Disposition.* Confidential Statements of Affiliations and Financial Interests and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the command or activity to which the reporting individual was assigned at the time of filing, after which time they may be destroyed.

(q) *Review of positions and notification to file (DD Form 1555).* Commanding officers and heads of activities shall ensure that position descriptions of individuals described in paragraphs (o)(1)(iii) and (o)(1)(iv) of this section contain a statement that the incumbent must file a Confidential Statement of Affiliations and Financial Interests. All new or revised position descriptions shall be reviewed to determine those requiring such statements. Any individual may request review of a decision requiring submission of a statement by him or her through established personnel of the Department. Additionally, commanding officers and heads of activities shall notify in writing naval personnel required to file Confidential Statements by 30 September of each year, and shall furnish a DD Form 1555 to them. Lists shall be maintained to ensure that all statements have been completed and returned by 31 October, or as otherwise specified when extensions have been granted.

(r) *Availability of DD Form 1555.* Supplies of DD Form 1555 are available from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, under Stock Number 0102-LF-001-5550.

(s) *Privacy Act considerations.* Financial Disclosure Reports (SF-278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) contain sensitive personal information. Completed SF-278's are releasable to Government officers and employees and to the public, but only upon submission of a completed Request to Inspect or Receive Copies of SF-278, Financial Disclosure Report (OPM Form 1401) to the deputy ethics official having custody of the report. Naval personnel officially responsible within the chain of command for reviewing or approving a given individual's SF-278 need not submit such requests. Otherwise, care shall be exercised to ensure that completed SF-278's and DD Forms 1555 are seen only by personnel on a need-to-know basis in connection with their official duties. Adequate safeguards shall be utilized to prevent inadvertent or unauthorized disclosure of the completed forms and statements during review, transmittal, and storage. In addition, SECNAVINST 5211.5C prescribes other general restrictions and requirements applicable to the collection, use, and dissemination of these records, and contains Rules of Conduct under the Privacy Act which are applicable to all naval personnel.

(t) *Effect of disclosure.* The reporting of information or the filing of any report or statement of financial circumstances shall not be deemed to authorize the receipt of income, gifts, honoraria or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions otherwise prohibited by law, Executive Order, or regulation.

[50 FR 9010, Mar. 6, 1985; 50 FR 15892, Apr. 23, 1985]

§ 721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.

(a) *Basic procedures.* The administrative enforcement of restrictions on post employment activities imposed by 18 U.S.C. 207 will be accomplished in accordance with 5 CFR 737.27 and these procedures.

(b) *Delegation of authority.* Authority to administer proceedings under these provisions is delegated to the General Counsel of the Navy with power to redelegate.

(c) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information is not frivolous, the General Counsel expeditiously shall provide such information, along with any comments, to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice, and shall coordinate any investigation or possible administrative disciplinary action with the Department of Justice. If that Department advises that it does not intend to institute criminal proceedings, such coordination shall no longer be required.

(2) Upon receipt of advice from the Department of Justice that it does not intend to institute criminal proceedings, in circumstances where it has been determined, after appropriate review, that there is reasonable cause to believe that a former Department of the Navy officer or employee (hereafter referred to as a "former employee") has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations, the General Counsel will refer the case to the head of the activity where the alleged violation occurred. The activity head may initiate an administrative disciplinary proceeding by providing the former employee with notice of the alleged violation. The privacy of former employees shall be protected

as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(d) *Content of notice.* (1) Notice must include:

(i) A statement of allegations, and the basis thereof, sufficiently detailed to enable the former officer or employee to prepare a defense;

(ii) Notification of the right to a hearing;

(iii) The procedure for requesting a hearing;

(iv) A statement to the effect that if the former employee fails to request such a hearing, the Department of the Navy may, nevertheless, take disciplinary action if the former employee is determined to have violated 18 U.S.C. 207.

(2) A copy of these Procedures for Administrative Enforcement shall be provided with this notice.

(e) *Request for a hearing.* (1) Any former employee who is notified of an alleged violation of 18 U.S.C. 207 pursuant to paragraph (c)(2) of this section may, within 20 days from the date of such notice, request a hearing by writing to the activity head who issued the notice.

(2) If the former employee fails to request a hearing in accordance with paragraph (c)(1) of this section, the activity head will notify the General Counsel who may, nevertheless, render a final administrative decision in the matter and, if appropriate, impose the sanctions specified in paragraph (k) of this section.

(f) *Hearing examiner.* (1) The presiding official shall be an individual to whom the General Counsel has delegated authority to make an initial decision (hereafter referred to as a "hearing examiner").

(2) A hearing examiner shall be an attorney with not less than five years experience in the practice of law subsequent to admission to the bar.

(3) A hearing examiner shall be impartial. An individual who has participated in any manner in the decision to initiate proceedings may not serve as a hearing examiner in those proceedings.

(g) *Time, date, and place of hearing.* (1) The hearing shall be held at a reasonable time, date, and place.

(2) The date of the hearing shall be established with due regard to the former employee's need for adequate time to prepare a defense properly and the need to resolve expeditiously allegations that may be damaging to his or her reputation.

(h) *Hearing Rights.* The subject of the hearing shall have, at a minimum, the following rights:

(1) To represent himself or herself, or to be represented by counsel;

(2) To introduce and examine witnesses, and to submit physical evidence;

(3) To confront and cross-examine witnesses;

(4) To stipulate as to facts not in issue;

(5) To present oral argument; and

(6) To receive a transcript or recording of the proceedings.

(i) *Burden of proof.* The Department of the Navy has the burden of proof. A violation is established only by a preponderance of the evidence.

(j) *Decision.* (1) Upon conclusion of the hearing, the hearing examiner shall make a determination exclusively upon matters of record in the proceeding, which determination shall be in the form of a written decision. This decision [hereafter referred to as the "initial decision"] shall include all findings of fact and conclusions of law relevant to the matters at issue, including possibly mitigating circumstances. In cases where a violation is found to have occurred, the initial decision shall also include a recommendation as to what measures would constitute appropriate action. The initial decision shall be transmitted to the General Counsel, via the activity head, and a copy shall be mailed or otherwise furnished to the affected former employee.

(2) Within 20 days following receipt of a copy of the initial decision, the former employee may file an appeal with the General Counsel. An appeal shall be in writing, and shall set forth all errors of fact, or law, or both, together with the reasons therefor, alleged to exist in the initial decision.

(3) Upon review of the initial decision, and any appeal timely filed, the General Counsel shall issue a written decision which shall be based solely upon the record of the proceedings, or those portions thereof cited by the parties to limit the issues. If the General Counsel modifies or reverses the initial decision, findings of fact or conclusions of law that differ from those of the hearing examiner shall be specified. The decision of the General Counsel shall be deemed a final administrative determination.

(k) *Administrative sanctions.* The General Counsel may take appropriate disciplinary action in the case of any former employee found in violation of 18 U.S.C. 207 (a)-(c) or implementing regulations by:

(1) Prohibiting the former employee from making, on behalf of any other person, except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of the Navy, its officers or employees, on any matter of business, for a period not to exceed five years. This may be enforced by directing present officers and employees of the Department to refuse to participate in any such appearance, or to accept any such communication; and

(2) Taking other appropriate disciplinary action.

(l) *Judicial review.* Any person found in violation, as described, may seek judicial review of the final administrative determination.

[50 FR 9014, Mar. 6, 1985; 50 FR 15892, Apr. 23, 1985]

§ 721.18 Bedrock standards of conduct for Department of the Navy personnel.

(a) To maintain public confidence in the integrity of the Department of the Navy which is essential to the performance of its mission, all naval personnel shall comply with the standards of conduct listed in this section.

(b) Avoid any action, whether or not specifically prohibited, which might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) Do not engage in any activity or acquire or retain any financial interest which results in a conflict between your private interest and the public interest of the United States related to your duties.

(d) Do not engage in any activity that might result in or reasonably be expected to create the appearance of a conflict of interest.

(e) Do not accept gratuities from defense contractors.

(f) Do not use your official position to influence any person to provide any private benefit.

(g) Do not use inside information to further a private gain.

(h) Do not use your rank, title, or position for commercial purposes.

(i) Avoid outside employment or activity that is incompatible with your duties or may bring discredit to the Navy.

(j) Never take or use Government property or services for other than officially approved purposes.

(k) Do not give gifts to your superiors or accept them from your subordinates. (Consult § 721.6 for situations considered to fall outside this rule.)

(l) Conduct no official business with persons whose participation in the transaction would be in violation of law.

(m) Seek ways to promote efficiency and economy in Government operation and public confidence in its integrity.

PART 722—REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Sec.

722.1 Purpose.
722.2 Scope and effect.
722.3 Persons required to file form DD 1787.
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722.5—722.6 [Reserved]

Sec.
722.7 Availability of forms.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 166 and 5031; 50 U.S.C. 1436.

SOURCE: 41 FR 34745, Aug. 17, 1976, unless otherwise noted.

§ 722.1 Purpose.

This Part 722 implements 50 U.S.C. 1436 and Part 166 of this title, which establish requirements and procedures for annual filing and review of reports of Department of Defense (DoD) and defense related employment (form DD 1787) submitted by:

(a) Certain categories of civilian officers and employees of the Department of Defense who were formerly employed by defense prime contractors, and

(b) Certain categories of former military officers and former DoD civilian officers and employees who were subsequently employed by defense prime contractors.

§ 722.2 Scope and effect.

The provisions of this part apply to all Navy and Marine Corps activities, and to the Department of the Navy personnel and former or retired personnel indicated in § 722.3, including personnel of Navy or Marine Corps nonappropriated fund activities. An individual who is required to file a report of DoD and defense related employment (form DD 1787) and fails to do so for any reason is subject under 50 U.S.C. 1436 to a penalty of six months imprisonment, a fine of $1,000, or both.

§ 722.3 Persons required to file form DD 1787.

(a) *Criteria.* The Department of the Navy personnel and former or retired personnel indicated below shall file form DD 1787 with the Secretary of the Navy, in the manner prescribed in § 722.4, not later than January 15 following the close of any fiscal year in which all the specified conditions occur.

(1) *Civilian personnel formerly employed by defense prime contractors.* A civilian officer or employee of the Department of the Navy, including a consultant or part-time employee, shall file form DD 1787, if:

(i) He was employed during any part of the fiscal year by the Department of the Navy or another DoD component at a salary rate at least equal to the minimum rate for grade GS-13;

(ii) At any time during the three-year period preceding the beginning of the fiscal year, he was employed by or performed services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year; and

(iii) Such defense prime contractor received $10 million or more of negotiated defense contracts during the fiscal year.

(2) *Former civilian personnel subsequently employed by defense prime contractors.* A former civilian officer or employee of the Department of the Navy, including a consultant or part-time employee, shall file form DD 1787, if:

(i) During any part of the fiscal year, he was employed by or performed services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year;

(ii) Such defense prime contractor received at least $10 million of negotiated defense contracts during the fiscal year;

(iii) The employee's last employment with the Department of the Navy was terminated not more than three years prior to the beginning of the fiscal year; and

(iv) At any time during the three-year period preceding the termination of his last employment by the Department of the Navy, he was paid at a rate at least equal to the minimum rate provided at the time for grade GS-13.

(3) *Former military officers subsequently employed by defense prime contractors.* A former officer, including a retired officer, of the Navy, Marine Corps, Naval Reserve, or Marine Corps Reserve, who served on extended active duty for at least 10 years and was serving in the grade of lieutenant commander, major, or above, at the time of retirement or release from or termination of extended active duty, shall file a form DD 1787, if:

(i) During any part of the fiscal year, he was employed by or performed, services for a defense prime contractor, as defined in paragraph (b)(2) of this § 722.3, at a salary rate of at least $15,000 per year;

(ii) Such defense prime contractor received at least $10 million of negotiated defense contracts during the fiscal year; and

(iii) The former or retired officer's extended active duty terminated not more than three years prior to the beginning of the fiscal year. (A retired military officer is subject to the reporting requirement, if otherwise applicable, even if his military retirement pay is waived). A Reserve officer, not on active duty who is not a "retired officer" is a "former officer" for the purpose of form DD 1787 even though he currently holds a commission in a Reserve component.

(b) *Definitions*—(1) *Employed or employment* is used in a broad sense in this part to include services performed, as a consultant or otherwise, either for a defense prime contractor or for a component of the Department of the Navy or DoD. This definition includes, among other services which might have been performed for a defense prime contractor, representing a contractor at a hearing, trial, appeal, or other action in which the United States was a party and which involved services and materials provided or to be provided to DoD by such contractor, and representing a contractor in any transaction with DoD involving services or materials provided or to be provided by such contractor to DoD.

(2) *Defense prime contractor* is used in this part to mean any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with DoD, or any component thereof, to furnish services or materials, including construction, to DoD or a component, and which is awarded $10 million or more of negotiated defense contracts (as distinguished from contracts awarded by formal advertising) during a given fiscal year. The definition thus excludes subcontractors, and excludes prime contractors that receive less than $10 million of negotiated defense contract awards in a fiscal year. Also, a subsidiary of a large corporation may be a separate entity and contract directly with DoD in its own name, in which case the "defense prime contractor" would be the subsidiary corporation, not the parent corporation. Therefore, only the dollar amount of negotiated contracts awarded by DoD components to a subsidiary contracting in its own name during a fiscal year would be considered in determining whether the subsidiary's employees or former employees may be required to file form DD 1787. A list of the "defense prime contractors" meeting the criteria of this definition for the preceding fiscal year is published each December (each September for fiscal years prior to FY 1976) in the FEDERAL REGISTER, appearing as an amendment of 32 CFR 166.11. Such a list will also be disseminated annually to all naval activities by a JAG Notice.

(3) *Fiscal year* means the period beginning on July 1, 1975, and ending on September 30, 1976, and, after the latter date, means a year beginning on October 1 and ending on September 30 of the following year. It is designated by the calendar year in which it ends—for example, FY 1977, begins on October 1, 1976 and ends on September 30, 1977.

(1 CFR 18.14, and Part 21, Subpart B)

[41 FR 34745, Aug. 17, 1976, as amended at 45 FR 8599, Feb. 8, 1980]

§ 722.4 Filing and review procedures.

(a) Individuals required under § 722.3 to file reports of DoD and defense related employment (form DD 1787) shall submit such reports, in triplicate, in the format prescribed in form DD 1787 and the completion instruction which accompany the form, not later than January 15 following the close of the fiscal year to which the report pertains. The reports shall be submitted to the following officials:

(1) Active civilian personnel formerly employed by defense prime contractors: the Director of Civilian Manpower Management (Administrative Office (01B)), Department of the Navy, Washington, D.C. 20390;

(2) Former civilian personnel subsequently employed by defense prime contractors: The Director of Civilian

Manpower Management (Administrative Office (01B), Department of the Navy, Washington, D.C. 20390;

(3) Former or retired Navy or Naval Reserve officers subsequently employed by defense prime contractors: The Chief of Naval Personnel (Pers-14), Department of the Navy, Washington, D.C. 20370;

(4) Former or retired Marine Corps or Marine Corps Reserve officers subsequently employed by defense prime contractors: The Commandant of the Marine Corps (Code MSPA-3), Department of the Navy, Washington, D.C. 20380.

(b) The Director of Civilian Manpower Management, Chief of Naval Personnel, and Commandant of the Marine Corps shall receive for the Secretary of the Navy, as provided in paragraph (a) of this section, all reports of DoD and defense related employment (form DD 1787) submitted by personnel and former personnel of the Department of the navy, and shall review each report in the manner prescribed in paragraph (d) of this section. Not later than February 15 each year, they shall forward to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) three copies of each form received by them, together with a listing of the names of individuals submitting the forms, segregated by the names of the defense prime contractors for which the individuals were employed or performed services. (RCS DD-M&RA(A) 1051 (5370).)

(c) Not later than February 28 each year, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) shall forward to the Assistant Secretary of Defense (Manpower and Reserve Affairs) three copies of each form received pursuant to paragraph (b) of this section, together with a composite listing, in triplicate, of the names of individuals submitting the forms, segregated by the names of the defense prime contractors concerned. (RCS DD-M&RA(A) 1051 (5370).) (Copies of the completed forms and listings are later provided by the Assistant Secretary of Defense (Manpower and Reserve Affairs) to the Congress and are filed for public inspection in the Office of the Secretary of Defense.)

(d) In conducting the review prescribed in paragraph (b) of this section , the Director of Civilian Manpower Management, Chief of Naval Personnel and Commandant of the Marine Corps, as appropriate, shall determine whether:

(1) Each form submitted is required under this part and 50 U.S.C. 1436;

(2) All required information has been furnished; and

(3) The information submitted indicates an apparent violation of a conflict-of-interests law or regulation cited or provided in Part 721 of this chapter. (For example, the fact that a former officer became employed by a defense prime contractor after terminating Government duties involving that contractor might indicate a possible violation of 18 U.S.C. 207 or 208(A), or the fact that a retired Regular officer represents a contractor in transactions or negotiations with DoD components might indicate a possible violation of 18 U.S.C. 281 or temporarily disentitle him from receiving military retirement pay under 31 U.S.C. 801(c).)

(e) If, upon review of a form, it is determined that the form was not required to be submitted or that all required information has not been furnished, appropriate corrective action shall be taken. If it is determined that a conflict-of-interests violation may have been committed, the form will be processed as provided in paragraph (b) of this section, but a copy of the form shall be forwarded, for such additional review, inquiry, advice, or further action as may be warranted, to the Chief of Naval Material if involving a possible violation in connection with the procurement, acquisitions, or disposal of property within the purview of SECNAVINST 4385.1B; or to the Judge Advocate General in any other case.

§§ 722.5—722.6 [Reserved]

§ 722.7 Availability of forms.

Supplies of form DD 1787 are available in the Forms and Publications Segment of the Navy Supply System under Stock Number 0102-Lf-025-5090.

PART 723—BOARD FOR CORRECTION OF NAVAL RECORDS

Sec.

723.1 General provisions.
723.2 Establishment, function, and jurisdiction of the Board.
723.3 Application for correction.
723.4 General; notice; counsel; witnesses; access to records.
723.5 Hearing.
723.6 Action by the Board.
723.7 Action by the Secretary.
723.8 Staff action.
723.9 Reconsideration.
723.10 Settlement of claims.
723.11 Miscellaneous.

AUTHORITY: Secs. 1552, 5031, 70A Stat. 116, 278, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 1552, 5031.

§ 723.1 General provisions.

(a) *Purpose.* This part establishes procedures for making application, and the consideration of applications, for the correction of Navy and Marine Corps records (referred to in this part as naval records) by the Secretary of the Navy acting through the Board for Correction of Naval Records (hereinafter referred to in this part as the Board).

(b) *Authority.* Section 131 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190g) provides that no private bill or resolution, and no amendment to any bill or resolution, authorizing or directing the correction of military or naval records, shall be received or considered in either the Senate or the House of Representatives. Section 207 of the same Act, as amended, and as re-enacted and codified in 10 U.S.C. 1552, provides:

> (a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.
>
> (b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.
>
> (c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—
>
> (1) To the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;
>
> (2) If there is no such law covering order of payment, in the order set forth in section 2771 of this title; or
>
> (3) As otherwise prescribed by the law applicable to that kind of payment.
>
> A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.
>
> (d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.
>
> (e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961]

§ 723.2 Establishment, function, and jurisdiction of the Board.

(a) *Establishment and composition.* Pursuant to the foregoing statutory authority, the Board for Correction of Naval Records is established in the Office of the Secretary of the Navy. The Board consists of civilians of the executive part of the Department of the Navy in such number, not less than three, as may be appointed by the Secretary of the Navy. Three members present shall constitute a quorum of the Board. The Secretary of the Navy will designate one member as Chairman. In the absence or incapacity of the Chairman, an Acting Chairman chosen by the Board shall act as Chairman for all purposes.

(b) *Function.* The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice, and, when appropriate, to make recommendations to the Secretary.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 42 FR 18277, Apr. 6, 1977]

§ 723.3 Application for correction.

(a) *General requirements.* (1) The application for correction should be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or exact facsimile thereof, and should be addressed to: Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370. Forms and explanatory matter may be obtained upon request addressed to the Board.

(2) Except as provided in paragraph (a)(3) of this section, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim. (18 U.S.C. 287, 1001.)

(3) When the record in question is that of a person who is incapable of making application himself, or whose whereabouts is unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted as may be required by the Board.

(b) *Time limit for filing application.* A claimant, his heir, or legal representative, must file the application for correction of a record within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than 3 years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse his failure to file his application within the time prescribed above.

(c) *Exhaustion of other remedies.* No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

(d) *Other proceedings not stayed.* The application to the Board for correction of a record shall not operate as a stay of any proceedings being taken with respect to the person involved.

(e) *Consideration of application.* (1) Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him, or for the reason that the applicant did not file his application within 3 years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

(2) The Board may deny any application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a Board for the correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate the existence of probable material error or injustice is without prejudice to further consideration in the event new and relevant evidence is submitted. The applicant will be informed of his privilege to submit newly discovered relevant evidence for consideration.

(3) All requests for further consideration may be initially screened by the staff of the Board to determine whether and evidence or other matter (including, but not limited to any factual allegations or any arguments why the relief should be granted) has beeen submitted by the applicant that was not in the record at the time of any prior Board consideration. If such evidence or other matter has been submitted, the request shall be forwarded to the Board for a determination in accordance with paragraph (e)(2) of this section. If no such evidence or other matter has been submitted, the applicant will be informed that his request was not considered by the Board because it did not contain any evidence or other matter that was not in the record at the time of any previous Board consideration.

(4) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination shall be made in writing and include a brief statement of the grounds for denial.

(5) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant's claim of constitutional, statutory and/or regulatory violations that were rejected, together with all the essential facts upon which the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reasons for a discharge. Attached to the statement shall be any advisory staff opinion considered by the Board which is not fully set out in the statement, together with any minority opinion.

(6) The brief statement of the grounds for denial, together with all attachments, shall be furnished promptly to applicant and counsel, who shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. Classified or privileged material contained in or attached to the statement of the grounds for denial may be deleted only if a written statement of the basis for the deletion is provided the applicant and counsel.

(7) Documents sent to each applicant in accordance with paragraph (e)(6) of this section, and § 723.8(d), and all other non-boiler-plate statements of findings and conclusions made on final determination of an application by the Board, the Secretary of his designee together with the record of votes of Board members, and required appendices, will be promptly indexed and made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room, located on the Concourse of The Pentagon Building, Washington, D.C. There will be deleted from such documents information which would be a clearly unwarranted invasion of personal privacy. Privileged or classified material may be deleted only if a written statement of the basis for deletion is provided applicant and counsel.

(f) *Special standards.* (1) Pursuant to the order of the United States District Court for the District of Columbia in *Walters v. Secretary of Defense* (Civil Action No. 81-0962), a former Navy or Marine Corps servicemember who presently possesses a less than honorable administrative discharge, which was characterized as less than honorable in an administrative proceeding in which evidence was introduced that was developed by, or as a result of, compelled urinalysis testing administered for the purpose of identifying drug abusers, as entitled to special processing.

(2) Applicants who believe that their cases qualify for such special processing should place the word "CATEGORY W" in block 2, DD Form 149, Application for Correction of Military or Naval Record. Such applications shall be reviewed expeditiously by a designated official who will either cause the applicant to be sent an honorable discharge certificate or cause him/her to be forwarded a notice of the initiation of a new administrative proceeding designed to determine whether the less than honorable discharge awarded him/her can be justified. Each notice of initiation of proceedings shall inform the applicant of (i) the bases of separation, other than drug abuse or use or possession of drugs based upon compelled urinalysis, that was specified in the commanding officer's report and upon which the Navy or Marine Corps now seeks to base the less than honorable discharge, (ii) the full complement of procedural protections that are in effect at the time the notice is sent and which are to be accorded the applicant, including the name, address, and telephone number of a judge advocate or law specialist with whom the applicant has a right to consult, and (iii) the right to participate in the new proceedings or to elect to maintain his or her present character of discharge.

(3) Any new administrative proceedings initiated pursuant to this paragraph shall be instituted *ab initio* with the full complement of procedural protections required by current military regulations to be accorded a servicemember prior to administrative separation, and shall be based upon only those bases for separation, other than drug abuse or use or possession of drugs based upon compelled urinalysis, that were specified in the commanding officer's letter of notification in the former member's case. Such new proceedings shall be completed within a reasonable period of time and, if an administrative hearing is held, it shall be conducted at the Navy or Marine Corps installation of the applicant's former service closest to the applicant's current residence.

(4) Applicants determined not to qualify for the relief described in paragraph (f) (2) or (3) of this paragraph by the designated official, will have their applications referred to the Naval Discharge Review Board for appropriate review and action. This action of the designated official, as well as the action authorized by paragraph (f)(2) of this paragraph, shall not constitute an action or decision by the Board for Correction of Naval Records.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 34 FR 19195, Dec. 4, 1969; 42 FR 18277, Apr. 6, 1977; 43 FR 2170, Jan. 16, 1978; 47 FR 41558, Sept. 21, 1982]

§ 723.4 General; notice; counsel; witnesses; access to records.

(a) *General.* In each case in which the Board determines a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

(b) *Notice.* (1) In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least thirty days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

(2) Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with § 723.5(b)(2).

(c) *Counsel, definition of.* As used in this part, the term "counsel" will be construed to include members in good standing of the Federal Bar or the Bar of any State, accredited representatives of veterans organizations recognized by the Administrator of Veterans' Affairs under Title 38, U.S. Code, Sec. 3402, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

(d) *Witnesses.* The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

(e) *Access to Records.* (1) The applicant shall have access to such official records as are deemed necessary to an adequate presentation of his case. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Navy as he desires to present in support of his case.

(2) Classified or privileged matter shall not be disclosed or made available without express finding of the Chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure shall not be contrary to existing law and departmental regulations concerning privileged and classified material. When appropriate the applicant may be supplied only with a summary or extract of classified matter.

(3) This regulation does not authorize the furnishing of copies of official records by the Board. Requests for copies of official records should be submitted in accordance with regulations governing the release of information.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12121, Dec. 19, 1961; 34 FR 19195, Dec. 4, 1969]

§ 723.5 Hearing.

(a) *Convening of Board.* The Board will be convened at the call of the Chairman and will recess or adjourn at his order.

(b) *Conduct of hearing.* (1) The hearing shall be conducted by the Chairman, and shall be subject to his rulings so as to insure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(2) If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(3) If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with the provisions of paragraph (b)(2) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(4) All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(c) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

[17 FR 10243, Nov. 11, 1952]

§ 723.6 Action by the Board.

(a) *Deliberations, findings, and conclusions, and recommendations.* (1) Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete

and impartial determination of the facts and issues.

(3) Following a hearing, the Board determines to recommend that the record be corrected without a hearing, they will make written findings, conclusions, and recommendations. If denial of relief is recommended following a hearing, such written findings and conclusions will include a statement of the grounds for denial as described in § 723.3(e)(5). The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Navy as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

(c) *Record of proceedings.* When the Board has completed its determination, a record thereof shall be prepared. Such record shall indicate whether or not a quorum was present and the name and vote of each member present. The record shall include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions, and recommendations of the Board where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Navy.

(e) *Delegation of authority to correct certain military or naval records.* (1) The Board for Correction of Naval Records is authorized to take final action on behalf of the Secretary of the Navy, under 10 U.S.C. 1552, in approving the correction of military or naval records, provided

(i) The relief granted is completely in accord with that requested by the applicant, and

(ii) Such action has (A) been recommended by the proper naval authority; (B) is agreed to by the Board; and (C) falls into one of the following categories:

(*1*) Restoration of leave unduly charged to applicants.

(*2*) Promotion retroactively of applicants who would have been promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles; and adjustment of their pay accounts accordingly.

(*3*) Adjustment of enlisted grades and promotion of applicants to grades held immediately prior to reenlistment who were inadvertently or improperly reenlisted in a lower grade.

(*4*) Awards of basic allowance for subsistence, family separation allowance, dislocation allowance and travel allowance to applicants entitled thereto.

(*5*) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan and/or the Survivor Benefit Plan where failure to elect to participate, decline to participate, or to make an appropriate election was due to inadvertence, misunderstanding or through no fault of the service member.

(*6*) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(*7*) Award of variable reenlistment bonus, proficiency pay, enlistment and/or reenlistment bonus to applicants clearly entitled thereto.

(*8*) Change of home of record where upon entry on duty applicants erroneously reported other than actual home.

(*9*) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(2) The Executive Secretary of the Board, after assuring compliance with the above conditions, will announce the final action on applications processed under this paragraph.

[42 FR 18277, Apr. 6, 1977]

§ 723.7 Action by the Secretary.

The record of proceedings of the Board, except in cases finalized by the Board under the authority delegated in paragraph (e) of § 723.6 or those denied by the Board without a hearing, will be forwarded to the Secretary of the Navy who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. Those cases returned for further consideration shall be accompanied by a brief statement setting out the reasons for such action and any specific instructions. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he expressly adopts in whole or in part the findings, conclusions and recommendation of the Board, shall include a brief statement of the grounds for denial. See paragraph (e)(5) of § 723.3.

[42 FR 18278, Apr. 6, 1977]

§ 723.8 Staff action.

(a) Upon final action by the Secretary of the Navy, the record of proceedings shall be returned to the Board for disposition. The Board shall transmit the decision previously submitted and approved by the Secretary of the Navy to the proper naval authority for appropriate action.

(b) The addresses of such decisions shall report compliance therewith to the Chairman of the Board.

(c) The Board shall transmit a copy of the record of proceedings to the proper naval authority for filing in the service record of lthe subject of the application except where the effect of such action would be to nullify the relief granted. In such cases no reference in the service record or files of the applicant and all copies of the record of proceedings and any related papers shall be forwarded to the Board and by it retained in a confidential file maintained for the purpose. Access to such file shall be had only upon written order of the Secretary of the Navy.

(d) Upon receipt of the record of proceedings after final action by the Secretary of the Navy, or by the Board acting under the authority contained in paragraph (e) of § 723.6, the Board shall communicate the decision to the applicant and counsel.

(1) If the recommendation of the Board was to deny relief or if the final decision of the Secretary or the Board was to deny relief, the following material will be made available to the applicant and counsel:

(i) A statement of the findings conclusions, and recommendations made by the Board;

(ii) Any advisory staff opinions considered by the Board or the reviewing authority;

(iii) Any minority reports; and

(iv) Any material prepared by the Secretary of the Navy as required in § 723.7. Moreover, applicant and counsel shall also be informed that the name and final vote of each Board member will be furnished or made available upon request. To the extent that any of the above material consists of classified or otherwise privileged matters, delections may be made only if a written statement of the basis therefor is provided the applicant and counsel.

(2) If the final decision was other than to deny relief, the applicant and counsel are entitled, upon request, to receive a copy of the Board's findings, conclusions and recommendations.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 1212° Dec. 19, 1961; 42 FR 18278, Apr. 6, 1977]

§ 723.9 Reconsideration.

After final adjudication further consideration will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Navy.

[34 FR 19196, Dec. 4, 1969]

§ 723.10 Settlement of claims.

(a) *Authority.* (1) The Department of the Navy is authorized to pay claims in accordance with 10 U.S. Code 1552, which is quoted in § 723.1(b).

(2) The Department of the Navy is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

(b) *Application for settlement.* (1) Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse, heir or beneficiaries, in the order prescribed by the law applicable to that kind of payment; or if there is no such law covering order of payment, in the order set forth in 10 U.S. Code 2771; or as otherwise prescribed by the law applicable to that kind of payment.

(3) Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(c) *Settlement.* (1) Settlement of claims shall be upon the basis of the decision and recommendations of the Board, as approved by the Secretary of the Navy. Computation of the amounts due shall be made by the appropriate disbursing activity. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government arising from military service.

(2) Prior to or at the time of payment, the person, or persons to whom payments are to be made shall be advised by the disbursing activity as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

(d) *Report of settlement.* In every case where payment is made, the amount of such payment and the names of the payee or payees, shall be reported to the Chairman of the Board.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12122, Dec. 19, 1961; 34 FR 19196, Dec. 4, 1969; 42 FR 18278, Apr. 6, 1977]

§ 723.11 Miscellaneous.

(a) *Staff assistance.* The facilities of all bureaus, offices, and boards of the Navy Department shall be made available to the Board to assist it in the performance of its function.

(b) *Expenses.* No expenses of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf, will be paid by the Government.

(c) *Changes in procedures.* The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Navy and of the Secretary of Defense.

(d) *Publication in the "Federal Register."* These regulations and any amendments thereto will be published in the FEDERAL REGISTER.

(e) *Indexing of decisions.* (1) Documents sent to each applicant and counsel in accordance with § 723.3(e)(6) and § 723.8(d), together with the record of the votes of board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary of the Navy will be indexed and promptly made available for public inspection and copying at the Armed Forces Discharge Review/Correction Boards Reading Room located on the Concourse of The Pentagon Building, Washington, D.C.

(2) All documents made available for public inspection and copying shall be indexed in a usable and concise form so as to enable the public to identify those cases similar in issue together with the circumstances under and/or reasons for which the Board and/or Secretary of the Navy have granted or denied relief. The index shall be published quarterly and shall be available for public inspection and distribution by sale at the reading room located on the Concourse of The Pentagon Building, Washington, D.C. Inquiries concerning the index or the reading room may be addressed to the Armed Forces Discharge Review/Correction Boards Reading Room, The Pentagon Concourse, Washington, D.C. 20301.

(3) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which may result in a clearly unwarranted invasion of personal privacy or which is privileged or classified may be made only if a written statement of the basis for such deletion is made available for public inspection.

[17 FR 10243, Nov. 11, 1952, as amended at 26 FR 12122, Dec. 19, 1961; 42 FR 18278, Apr. 6, 1977; 43 FR 2170, Jan. 16, 1978]

PART 724—NAVAL DISCHARGE REVIEW BOARD

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1553.

SOURCE: 50 FR 10943, Mar. 19, 1985, unless otherwise noted.

Subpart A—Definitions

§ 724.101 Naval Service.

The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

§ 724.102 Naval Discharge Review Board.

An administrative board, referred to as the "NDRB" established by the Secretary of the Navy pursuant to Title 10, United States Code, section

1553, for the review of discharges of former members of the Naval Service.

§ 724.103 NDRB panel.

An element of the NDRB, consisting of five members, authorized to review discharges. In plenary review session, an NDRB panel acts with the authority delegated by the Secretary of the Navy to the Naval Discharge Review Board.

§ 724.104 NDRB Traveling Panel.

An NDRB Panel that travels for the purpose of conducting personal appearances discharge review hearings at locations outside of the National Capital Region (NCR).

§ 724.105 President of the NDRB.

A senior officer of the Naval Service designated by the Secretary of the Navy who is responsible for the direct supervision of the discharge review function within the Naval Service. (See Subpart E).

§ 724.106 Presiding Officer, NDRB Panel.

The senior member of an NDRB Panel shall normally be the Presiding Officer. He/she shall convene, recess and adjourn the NDRB Panel as appropriate.

§ 724.107 Discharge.

In the context of the review function prescribed by 10 U.S.C. 1553, a discharge or dismissal is a complete separation from the Naval Service, other than one pursuant to the sentence of a general court-martial. By reason of usage, the term "discharge" is predominantly applicable to the separation of enlisted personnel for any reason, and the term "dismissal" to the separation of officers as a result of Secretarial or general court-martial action. In the context of the mission of the NDRB, the term "discharge" used here shall, for purpose of ease of expression, include any complete separation from the naval service other than that pursuant to the sentence of general court-martial. The term "discharge" also includes the type of discharge and the reason/basis for that discharge, e.g., Other Than Honorable/Misconduct (Civil Conviction).

§ 724.108 Administrative discharge.

A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps or the Commander, Naval Military Personnel Command, but specifically excluding separation by sentence of a court-martial.

§ 724.109 Types of administrative discharges.

(a) A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are:

(1) *Honorable.* A separation from the naval service with honor. The issuance of an Honorable Discharge is contingent upon proper military behavior and performance of duty.

(2) Under Honorable Conditions (also termed General Discharge). A separation from the naval service under honorable conditions. The issuance of a discharge under honorable conditions is contingent upon military behavior and performance of duty which is not sufficiently meritorious to warrant an Honorable Discharge.

(3) *Under Other Than Honorable Conditions (formerly termed Undesirable Discharge).* A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

(4) *Entry Level Separation.* A separation from the naval service, normally uncharacterized, issued to certain members whose separation processing was initiated while they were in an Entry Level Status. It is used to terminate the service of a member when it is determined that the member is unqualified for further naval service by reason of unsatisfactory performance or conduct (or both) while in an Entry Level Status.

§ 724.110 Reason/basis for administrative discharge.

The terms "reason for discharge" and "basis for discharge" have the same meaning. The first is a Navy term and the second is a Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government, Misconduct. Reasons/basis for discharge are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

§ 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad Conduct.* A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable.* A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

§ 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as havng been under other than honorable condition, nor does it serves to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation.

§ 724.113 Application.

In the context of this Manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 must be used for the application.

§ 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under Title 10, U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by the NDRB at the request of the former member, of, if authorized under § 724.113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the NDRB's own motion.

§ 724.115 Next of kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse, children (whether by current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole or half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death).

§ 724.116 Council/representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a Federal Court or of the highest court of a State; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a State agency concerned with veterans affairs; or a representative from private organizations or local Government agencies.

§ 724.117 Discharge review.

A nonadversary administrative reappraisal at the level of the Navy Department of discharges from the naval service. The object of the reappraisal is to determine whether the discharge should be changed, and if so, the nature of the change. This reappraisal includes the type and reason/basis for separation, the procedures followed in accomplishing separation, and the characterization of service. This term includes determinations made under the provisions of 38 U.S.C. 3103(2).

§ 724.118 Documentary discharge review.

A formal session of the NDRB convened for the purpose of reviewing, on the basis of documentary data, an applicant's discharge. The Documentary data shall include the application together with all information accompanying that application, available service and medical records, and any other information considered relevant by the NDRB.

§ 724.119 Personal appearance discharge review.

A formal session of the NDRB convened for the purpose of reviewing an applicant's discharge on the basis of a personal appearance, as well as documentary data. The personal appearance may be by the applicant or by a representative of the applicant, or both.

§ 724.120 National Capital Region (NCR).

The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

§ 724.121 Decisional document.

The written recordation of the applicant's summary of service, the issue or issues presented together with any evidence offered in support of the application, the NDRB's response to the issue or issues, the votes of the members of the panel, and any recommendations or responses by the President of the NDRB or the Secretarial Reviewing Authority (SRA). The decisional document is promulgated by the "en bloc letter".

§ 724.122 Recorder, NDRB Panel.

A panel member responsible for briefing an applicant's case from the documentary evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance discharge hearings, and drafting the decisional document subsequent to the hearing.

§ 724.123 Complainant.

A former member of the Armed Forces (or the former member's counsel) who submits a complaint under 32 CFR Part 70 with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under reference (b) stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

Subpart B—Authority/Policy for Departmental Discharge Review

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Naval Council of Personnel Boards. By SECNAVINST 5430.7L, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his assigned area of responsibility and exercises oversight over the Naval Council of Personnel Boards. SECNAVINST 5420.135C of July 15, 1983 states the organization, mission, duties and responsibilities of the Naval Council of Personnel Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09B26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 09B26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission statement:

> To administer and supervise assigned boards and councils.

§ 724.202 Statutory/Directive Authority.

The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, and manuals and directives of the Department of the Navy, and other written public expressions of policy by competent authority:

(a) 10 U.S.C. 1553, Review of discharge or dismissal:

(1) "The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal."

(2) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(3) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative or an organization recognized by the Administrator of Veterans' Affairs under Title 38 U.S.C. 3401 *et seq.*".

(b) Public Law 95-126. See Appendix D.

(c) *32 CFR Part 70.* This provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of 32 CFR Part 70 are incorporated in this Manual.

(d) The Secretary of Defense memoranda dated August 13, 1971 and April 28, 1972 (NOTAL). These directed a review for recharacterization of (1) administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (2) punitive discharges and dismissals issued solely for conviction of personal use of drugs and possession for the purpose of such use for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See Appendix B).

(e) *32 CFR Part 41.* This prescribes policy, standards and procedures which govern the administrative separation of enlisted persons from the Armed Forces.

§ 724.203 Broad objectives of naval discharge review.

Naval discharge review shall have as its broad objectives:

(a) The furtherance of good order and discipline.

(b) The correction of injustice or inequity in the discharge issued.

(c) The correction of administrative or clerical errors.

§ 724.204 Eligibility for naval discharge review.

Any former member of the Naval Service, eligible for review under reference (a) or surviving spouse, next of kin or legal representative, shall upon submission of an application be afforded a review of the member's discharge from the Naval Service as provided in §§ 724.205 and 724.206. Discharge review may also be initiated on the motion of the NDRB (See § 724.220).

§ 724.205 Authority for review of naval discharges; jurisdictional limitations.

(a) The Board shall have no authority to:

(1) Review a discharge or dismissal resulting from a general court-martial;

(2) Alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency;

(3) Revoke any discharge or dismissal;

(4) Reinstate a person in the naval service;

(5) Recall a former member to active duty;

(6) Change a reenlistment code;

(7) Make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces;

(8) Cancel or void enlistment contracts; or

(9) Change the reason for discharge from or to a physical disability

(b) Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years.

§ 724.206 Jurisdictional determinations.

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in § 724.205. Decisions shall be made by administrative action without referral to the NDRB. Normally, they shall be made by the Executive Secretary of the NDRB, or they may be referred to the President, NDRB.

§ 724.207 Disposition of applications for discharge review.

One of three dispositions will be made of an application for review of a discharge:

(a) The application may be rejected for reason of:

(1) Absence of jurisdiction;

(2) Previous review on the same evidence; or

(b) The application may be withdrawn by the applicant; or

(c) The application may be accepted and the discharge reviewed by the NDRB, resulting in,

(1) Change to the discharge, or

(2) No change.

§ 724.208 Implementation of NDRB decisions.

The Commandant of the Marine Corps and the Chief of Naval Operations are responsible for implementing Naval Discharge Review Board decisions within their respective services. The Commandant of the Marine Corps shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The Commander, Naval Military Personnel Command, acting for the Chief of Naval Operations and Chief of Naval Personnel, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

§ 724.209 Evidence supporting applications.

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper as issued. When hearings are scheduled, applicants must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

§ 724.210 Review action in instances of unavailable records.

(a) In the event that Department of the Navy personnel or health records associated with a requested review of discharge are not located at the custodial activity, the following action shall be taken by the NDRB prior to consideration of the request for discharge review.

(1) A certification that the records are unavailable shall be obtained from the custodial activity.

(2) The applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this time period, the review may be conducted with information available to the NDRB.

(3) The presumption of regularity in the conduct of government affairs may be applicable in instances of unavailable records depending on the circumstances of the case. (See § 724.211)

§ 724.211 Regularity of government affairs.

There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

§ 724.212 Availability of records.

(a) Before applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132. Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the NDRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act (5 U.S.C. 552a) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the headquarters of the NDRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may also examine their military personnel records at the site of their scheduled review before the hearing. The NDRB shall notify applicants of the dates the records are available for examination in their standard scheduling information.

(b) If the NDRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity, applications for such information must be made by the applicant to the cognizant authority. The NDRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) If the official records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 60 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the NDRB.

(d) The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on request of an applicant, the NDRB shall provide the applicant and counsel or representative, if any, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The NDRB shall also notify the applicant or counsel or representative: (a) of the right to examine such documents or to be provided with copies of the documents upon request; (b) of the date by which such requests must be received; and (c) of the opportunity to respond within a reasonable period of time to be set by the NDRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

(e) Regulations of a military department may be obtained at many installations under the jurisdiction of the Military Department concerned or by writing to the following address: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, D.C. 20310.

§ 724.213 Attendance of witnesses.

Arrangement for attendance of witnesses testifying in behalf of the applicant at discharge review hearings is the responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

§ 724.214 Applicant's expenses.

Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the Department of Defense. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

§ 724.215 Military representation.

Military officers, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before an NDRB Panel are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by 18 U.S.C. 205.

§ 724.216 Failure to appear at a hearing or respond to a scheduling notice.

(a) Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(2) When the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

(b) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the NDRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

§ 724.217 Limitation—Reconsiderations.

A discharge review shall not be subject to reconsideration except:

(a) When the only previous consideration of the case was on the motion of the NDRB;

(b) When the original discharge review did not involve a personal hearing and a hearing is now desired, and the provisions of § 724.216 do not apply;

(c) When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(d) When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

(e) When an individual is to be represented by counsel or representative, and was not so represented in any previous consideration of the case by the NDRB;

(f) When the case was not previously considered under uniform standards published pursuant to Public Law 95-126 and such application is made within 15 years after the date of discharge; or

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 724.218 Limitation—Continuance and Postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the NDRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(b) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner or for the convenience of the government.

§ 724.219 Withdrawal of application.

An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

§ 724.220 Review on motion of the NDRB.

Reviews of Naval discharges may be initiated by the NDRB on its own motion (10 U.S.C. 1553) which includes reviews requested by the Veterans Administration under 38 U.S.C. 101, 3103 as amended by Public Law 95-126 of October 8, 1977 (See Public Law 98-209).

§ 724.221 Scheduling of discharge reviews.

(a) If an applicant requests a personal appearance discharge review, or to be represented in absentia, the NDRB shall provide a hearing in the NCR or at another site within the forty-eight contiguous states.

(b) The NDRB shall subsequently notify the applicant and representative (if any) in writing of the proposed personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. If the applicant elects, this time limit may be waived and an earlier date set.

(c) When an applicant requests a documentary review, the NDRB shall undertake the review as soon as practicable. Normally, documentary reviews shall be conducted in the order in which they are received.

§ 724.222 Personal appearance discharge hearing sites.

(a) The NDRB shall be permanently located, together with its administrative staff, in the NCR. The NDRB shall routinely conduct personal appearance discharge reviews and documentary reviews at this, its permanent office.

(b) In addition, as permitted by available resources, NDRB Panels shall travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews. The selection of sites and frequency of visits shall be predicated on the number of requests pending within a region and the availability of resources.

§ 724.223 NDRB support and augmentation by regular and reserve activities.

(a) When an NDRB Panel travels for the purpose of conducting hearings, it shall normally select Navy or Marine Corps installations in the area visited as review sites.

(b) The NDRB Traveling Board shall normally consist of members from the NCPB and augmentees from regular and reserve Navy and Marine Corps sources, as required.

(c) Navy and Marine Corps activities in the geographical vicinity of selected review sites shall provide administrative support and augmentation to an NDRB Panel during its visit where such assistance can be undertaken without interference with mission accomplishment. The NDRB shall coordinate requests for augmentees and administrative support through Commandant of the Marine Corps or the Chief of Naval Reserve, as appropriate.

(d) The administrative staff of the NCPB shall undertake all arrangements for NDRB Traveling Panel visits and shall process associated review documents.

§ 724.224 Court-martial specifications, presumption concerning.

(a) Relevant and material facts stated in a court-martial specification, shall be presumed by the NDRB Panel as established facts. With respect to a discharge or dismissal adjudged by a court-martial case tried under the Uniform Code of Military Justice, the action may extend only to change in the discharge or dismissal for purposes of clemency. This policy only applies to cases filed with the discharge review board after December 6, 1983.

(b) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial, shall be considered in accordance with the following:

(1) If the applicant/accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the stated facts were true, then the NDRB can presume the truth of such facts, unless there is a substantial credible evidence to rebut this presumption; or

(2) If the discharge in lieu of court-martial only required a valid preferral, the NDRB may presume that the signer either had personal knowledge of, or had investigated the matters set forth, and that the charges were true in fact to the best of the signer's knowledge and belief.[1] The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the NDRB. To the extent that the discharge proceeding reflects an official determination that the facts stated in the charge sheet are true; that the applicant/accused admitted the facts stated in the charge sheet; or that the applicant/accused admitted guilt of the offense(s), then the presumption is strengthened. In accordance with paragraph B12f of enclosure (3) to 32 CFR Part 70 the presumption may be rebutted by "substantial credible evidence."

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[1] Charges may be preferred by any person subject to the Uniform Code of Military Justice. The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state that the signer has personal knowledge of, or has investigated the matters set forth therein; and that the charges are true in fact to the best of the signer's knowledge and belief. 10 U.S.C. 830 (1976) (Art. 30 Uniform Code of Military Justice).

Subpart C—Director, Naval Council of Personnel Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

§ 724.301 Mission.

To administer and supervise assigned boards and councils within the Department of the Navy.

§ 724.302 Functions: Director, Naval Council of Personnel Boards.

(a) Make recommendations to the Secretary of the Navy regarding organization, tasking and resources of the NDRB and its associated administrative support.

(b) Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.

(c) Provide administrative and clerical support for NDRB.

(d) Inform the Secretary of the Navy of matters of interest to him.

(e) Maintain a system of records, including as a minimum:

(1) Records specified for the NDRB as stipulated in the procedures prescribed in Subpart H of this Manual.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

(f) Establish billet/position assignment criteria for the NDRB.

(g) Propose to the Secretary of the Navy, changes to this instruction.

(h) Issue requisite precepts and remove or add members to the NDRB from personnel detailed to serve on the Naval Council of Personnel Boards, or from personnel otherwise made available.

§ 724.303 Functions: President, Naval Discharge Review Board.

(a) Exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

(b) Supervise and direct the activities of the NDRB.

(c) Maintain appropriate liaison with discharge review activities in other services (use Army Discharge Review Board as focal point for service coordination).

(d) Maintain coordination with the Commandant of the Marine Corps (Code M) and the Commander, Naval Military Personnel Command in matters associated with discharge review.

(e) In conformance with SECNAVINST 5211.5C, protect the privacy of individuals in connection with discharge review.

(f) Assure that NDRB functions are administered in accordance with the appropriate Secretary of the Navy instructions dealing with privacy and access to information.

(g) Convene the NDRB as authorized by the Secretary of the Navy.

(h) Direct the movement of the NDRB Traveling Panel(s) on the basis of regional hearing requests.

(i) Monitor the performance of the naval discharge review system. Make recommendations for changes and improvements. Take action to avoid delays in processing of individual discharge review actions.

(j) Provide NDRB inputs for the maintenance of a public reading file and maintain associated NDRB indexes updated quarterly.

§ 724.304 Responsibility for Department of the Navy support of the Naval Discharge Review Board.

The Commandant of the Marine Corps; Commander, Naval Military Personnel Command; Commander, Naval Reserve Force; Commander, Naval Medical Command; and chiefs of other bureaus and offices of the Department of the Navy shall provide support, as requested, to the Naval discharge review process.

§ 724.305 Functions of the CMC and CNO.

In the case of Navy, CNMPC, under the CNP, shall discharge responsibilities of the CNO.

(a) Provide and facilitate access by the NDRB to service/health records and other data associated with performance of duty of applicants.

(b) Advise the NDRB of developments in personnel management which may have a bearing on discharge review judgments.

(c) Implement the discharge review decisions of the NDRB and those of higher authority within respective areas of cognizance.

(d) Include the record of NDRB proceedings as a permanent part of the service record of the applicant in each case.

(e) Where appropriate, recommend cases for the NDRB to review on its own motion.

(f) Provide qualified personnel as NDRB members, recorders and administrative staff.

(g) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(1) The right to a review of his or her discharge under provisions of 10 U.S.C. 1553, and

(2) The procedures for applying for such a review.

(h) Provide Navy and Marine Corps units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administration directives.

§ 724.306 Functions of the Commander, Naval Medical Command.

Under the CNO the COMNAVMEDCOM shall facilitate, as required, access by the NDRB to health records of applicants.

§ 724.307 Functions of the Commander, Naval Reserve Force.

In the case of Navy, the COMNAVRESFOR shall discharge the responsibilities of the CNO—

(a) Upon request and within available resources, provide qualified inactive duty reservists to serve as members of the NDRB.

(b) Upon request, provide appropriate accommodations to the NDRB Traveling Panels for purposes of conducting reviews at Naval and Marine Corps Reserve Centers and aviation facilities.

Subpart D—Principal Elements of the Navy Department Discharge Review System

§ 724.401 Applicants.

As defined in § 724.114.

§ 724 402. Naval Discharge Review Board.

As defined in § 724.102.

§ 724.403 President, Naval Discharge Review Board.

Supervises the Naval Discharge Review Board. (See Subpart C).

§ 724.404 Director, Naval Council of Personnel Boards.

Exercises adminstrative control and oversight of the Naval discharge review process. (See Subpart C).

§ 724.405 Commandant of the Marine Corps or the Commander, Naval Military Personnel Command.

Personnel managers of the Marine Corps and the Navy; responsible for providing limited support to the Naval Discharge Review Board and for implementation of departmental discharge review decisions. (See Subpart C).

§ 724.406 Commander, Naval Medical Command.

Custodian of Navy and Marine Corps health records. (See Subpart C).

§ 724.407 Commander, Naval Reserve Force.

Manages Naval Reserve resources. Responsible for providing limited support to the Naval Discharge Review Board. (See Subpart C).

§ 724.408 Secretary of the Navy.

The final authority within the Department of the Navy in discharge review.

Subpart E—Procedural Rights of the Applicant and Administrative Actions Preliminary to Discharge Review

§ 724.501 Procedural rights of the applicant.

Each applicant has the following procedural rights:

(a) Within 15 years after the date of discharge, to make a written request for review of the applicant's discharge if the discharge was other than the result of a general court-martial. The request may include such other statements, affidavits, or documentation as desired.

(b) To have that review conducted by the NDRB either in the NCR or other designated location, when a personal appearance discharge review is desired.

(c) To appear before the NDRB in person, with or without counsel/representative; with counsel/representative concurrence, to have counsel/representative present the applicant's case in the absence of the applicant; or to have the review conducted based on records and any additional documentation submitted by the applicant or counsel/representative.

(d) To request copies of any documents or other evidence to be considered by the NDRB in the review of the applicant's discharge or dismissal other than the documents or evidence contained in the official record or submitted by the applicant prior to the conduct of the formal review and to be afforded an opportunity to examine such other documents or evidence or to be provided with copies of them.

(e) To withdrawn the request for discharge review without prejudice at any time prior to the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

(f) To request a continuance of the review when the continuance is of a reasonable duration and essential to achieving a full and fair hearing. The request must indicate the reason why the continuance is required.

(g) To request postponement of the discharge review for good and sufficient reason set forth in a timely manner.

(h) To request reconsideration of the discharge review under the conditions set forth in § 724.217.

(i) To have access to the information to be considered by the NDRB prior to the actual review of the applicant's case.

(j) To have the applicant's right to privacy protected in any review conducted by the NDRB.

(k) When appearing personally before the NDRB:

(1) To introduce witnesses, documents, and sworn or unsworn testimony.

(2) To present oral or written arguments personally or through counsel/representative.

(l) To submit documents, affidavits, briefs or arguments in writing. When the counsel/representative appears in person before the NDRB, arguments may be presented orally.

(m) To state clearly and specifically the issue or issues which the applicant desires the NDRB to answer in writing. These must be presented in writing on DD Form 293 by the applicant or counsel/representative.

(n) To have the applicant's discharge reviewed under the standards of equity and propriety outlined in Subpart I.

(o) To be provided with a written decision on the applicant's review.

(p) If the case is to be forwarded for Secretarial review, to present a timely statement rebutting any findings, conclusions, or reasons of the NDRB or the President, NDRB, which are alleged to be erroneous on the facts, against the substantial weight of the evidence, or contrary to law or governing regulation, prior to that Secretarial review.

§ 724.502 Actions to be taken by the applicant preliminary to discharge review.

(a) *Application for Review of Discharge or Dismissal From the Armed Forces of the United States,* DD Form 293 must be used in requesting a discharge review. DD Form 293 is available at most military installations and regional offices of the Veterans Administration. This form is to be signed personally by the applicant. In the event the discharged individual is deceased or incompetent, the form must be signed by an authorized individual as discussed in § 724.113 of this Manual.

(b) The application is to be accompanied by:

(1) A copy of the certificate of discharge, if available;

(2) A copy of the Armed Forces of the United States Report of Transfer or Discharge (DD-214), if available;

(3) Certification of death, incompetency and evidence of relationship in applicable cases (§ 724.113);

(4) Other statements, affidavits, depositions, documents and information desired by the applicant to be considered by the NDRB.

(c) Correspondence relating to review of naval discharges should be addressed to:

Naval Discharge Review Board, Suite 905—
801 North Randolph Street, Arlington, VA
22203

(d) NDRB telephone number is (202) 696-4881.

§ 724.503 NDRB response to application for discharge review.

(a) The NDRB shall acknowledge receipt of the application.

(b) In the event a documentary review is requested, the applicant shall normally receive no further communication from the NDRB until notified of the decision in the case.

(c) In the event a personal appearance discharge review is requested, the applicant shall be notified of the proposed time and place of this review and shall be advised of the availability of the official documents to be considered by the NDRB.

(d) A copy of NDRB correspondence to an applicant shall be sent to the representative of record, if any.

§ 724.504 NDRB actions preliminary to discharge review.

(a) When each application for discharge review is received by the NDRB, the service record and health record of the applicant will be requested from the appropriate record custodian.

(b) Upon receipt, each record of service will be reviewed to determine whether or not the applicant appears to have been discharged under circumstances which might act as a bar to Veterans' Administration benefits under 38 U.S.C. 3103. These circumstances of discharge are:

(1) Discharge or dismissal by reason of the sentence of a general court-martial.

(2) Discharge as a conscientious objector who refused to perform military duty, to wear the uniform or otherwise to comply with lawful orders of competent military authority.

(3) Discharge as a deserter.

(4) Discharge on the basis, or as part of the basis, of an absence without authority from active duty for a continuous period of at least 180 days, if such discharge was under conditions other than honorable. Additionally, such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(5) Discharge or dismissal of an officer based on acceptance of the officer's resignation for the good of the service.

(6) Discharge, on his/her own application, during a period of hostilities, as an alien.

(c) If it appears that the applicant was discharged under one or more of the circumstances outlined in § 724.504b, a written notification will be sent which informs the applicant that:

(1) An initial service record review reveals that the discharge may have been awarded under circumstances which make the applicant ineligible for receipt of VA benefits regardless of any action taken by the NDRB.

(2) Separate action by the Board for Correction of Naval Records (BCNR) and/or the VA, in case of 180 days consecutive UA disqualification, may confer eligibility for VA benefits. Instructions for making application to the BCNR and for contacting the VA are provided.

Subpart F—Naval Discharge Review Board Mission and Functions

§ 724.601 General.

The NDRB is a component of the Naval Council of Personnel Boards and has its offices located in the NCR.

The NDRB conducts documentary reviews and personal appearance reviews in the NCR and, on a traveling basis, at selected sites within the 48 contiguous states. Regional site selection is predicated on the number of pending applications accumulated from a given geographical area and the resources available to support distant personal appearance reviews. The NDRB does not maintain facilities other than at its NCR offices. The primary sites of NCR are: Chicago, IL; Dallas, TX; and San Francisco, CA.

§ 724.602 Mission.

To decide, in accordance with standards of naval law and discipline and the standards for discharge review set forth in Subpart I, whether a discharge or dismissal from the naval service is proper and equitable, or whether it should be changed.

§ 724.603 Functions.

(a) Meet as frequently as necessary to provide expeditious review of naval discharges.

(b) Meet at locations within the 48 contiguous states as determined appropriate on the basis of the number of discharge review applications received from various geographical areas and of available resources and facilities.

(c) Review applications for review of discharges.

(d) In consonance with directives of higher authority and the policies set forth in this Manual, grant or deny change of discharges.

(e) Promulgate decisions in a timely manner.

(f) Maintain a system of records.

(g) Maintain liaison in discharge review matters with:

(1) General Counsel of the Navy.

(2) Commandant of the Marine Corps.

(3) Chief of Naval Operations.

(i) Commander, Naval Reserve Force.

(ii) Commander, Naval Medical Command.

(iii) Commander, Naval Military Personnel Command, under the Chief of Naval Personnel.

(4) Judge Advocate General of the Navy.

(5) Veterans' service organizations.

(6) Discharge review boards of the other services, using the Army Discharge Review Board as the focal point for service coordination.

(h) Protect the privacy of individuals whose records are reviewed.

(i) Maintain for public access a reading file and associated index of records of NDRB proceedings in all reviews undertaken subsequent to July 1, 1975.

Subpart G—Organization of the Naval Discharge Review Board

§ 724.701 Composition.

The NDRB acting in plenary review session shall be composed of five members. Normally the members shall be career military officers, assigned to the Naval Council of Personnel Boards or otherwise made available; inactive duty officers of the Navy and Marine Corps Reserve may serve as members when designated to do so by the President, NDRB.

(a) Presiding officers of the NDRB shall normally be Navy or Marine Corps officers in the grade of Captain/Colonel or above.

(b) The remaining NDRB membership shall normally be not less than the grade of Lieutenant Commander/Major with preference being given to senior grades.

(c) At least three of the five members of the NDRB shall belong to the service from which the applicant whose case is under review was discharged.

(d) Individual membership in the NDRB may vary within the limitations of the prescribed composition.

(e) Any member of a panel of the NDRB other than the presiding officer may act as recorder for cases assigned. The recorder will participate as a voting member of the panel.

§ 724.702 Executive management.

The administrative affairs of the NDRB shall be managed by the Executive Secretary. This responsibility shall include schedules, records, correspondence and issuance of NDRB decisions.

§ 724.703 Legal counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the senior Judge Advocate assigned to the Office of the Director, Naval Council of Personnel Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Subpart H—Procedures of Naval Discharge Review Board

§ 724.801 Matters to be considered in discharge review.

In the process of its review of discharges, the NDRB shall examine available records and pertinent regulations of the Department of the Navy, together with such information as may be presented by the applicant and/or representative, which will normally include:

(a) The application for discharge review;

(b) Statements, affidavits or documentation, if any, accompanying the application or presented during hearings;

(c) Testimony, if any, presented during hearings;

(d) Service and health records;

(e) A brief of pertinent facts extracted from the service and health records, prepared by the NDRB recorder.

§ 724.802 Applicant's responsibilities.

(a) *Request for change of discharge.* An applicant may request a change in the character of or reason for discharge (or both).

(1) *Character of discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Other than Honorable Discharge to General or Honorable Discharge). A person separated on or after 1 October 1982 while in an entry level status may request a change from Other Than Honorable Discharge to Entry Level Separation. A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(2) *Reason for discharge.* Block 7 of DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the NDRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the NDRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the NDRB are consistent with the request for change in discharge set forth in block 7 of the DD Form 293. If an ambiguity is created by a difference between and applicant's issue and the request in block 7, the NDRB will respond to the issue in the context of the action requested in block 7. In the case of a personal appearance hearing, the NDRB will attempt to resolve the ambiguity under § 724.802c.

(b) Request for consideration of specific issues. An applicant may request the Board to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both. In addition to the guidance set forth in this section, applicants should consult the other sections in this manual before submitting issues for consideration by the Board.

(1) *Submission of issues on DD Form 293.* Issues must be provided to the NDRB on DD Form 293 (82 Nov) before the NDRB closes the review process for deliberation.

(i) *Issues must be clear and specific.* An issue must be stated clearly and specifically in order to enable the NDRB to understand the nature of the issue and its relationship to the applicant's discharge.

(ii) *Separate listing of issues.* Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the NDRB.

(iii) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the NDRB, and its use:

(A) Provides a means for an applicant to set forth clearly and specifically those matters that, in the option of the applicant, provide a basis for changing the discharge;

(B) Assists the NDRB in focusing on those matters considered to be important by an applicant;

(C) Assists the NDRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue, and those matters submitted simply as background or supporting materials;

(D) Provides the applicant with greater rights in the event that the applicant later submits a complaint concerning the decisional document;

(E) Reduces the potential for disagreement as to the content of an applicant's issue.

(iv) *Incorporation by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the NDRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the NDRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the NDRB, the NDRB shall respond to such an issue. (See §§ 724.805 and 724.806.)

(v) *Effective date of the new Form DD 293.* With respect to applications pending (before November 1982, the effective date of the new DD Form 293), the NDRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received after November 1982, if the applicant submits an obsolete DD Form 293, the NDRB shall accept the application, but shall provide the applicant with a copy of the new form and advise the applicant that it will only respond to issues submitted on the new form in accordance with this instruction.

(2) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant is encouraged, but not required, to identify the issue as applying to either the character of or the reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the NDRB will presume that it applies solely to the character of discharge.

(3) *Relationship of issues to the standards for discharge review.* The NDRB reviews discharges on the basis of issues of propriety and equity. The standards used by the NDRB are set forth in § 724.804. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based.

(i) *Issues concerning the equity of the discharge.* An issue of equity is a matter that involves a determination whether a discharge should be changed under the equity standards of this part. This includes any issue, submitted by the applicant in accordance with § 724.802b(1), that is addressed to the discretionary authority of the NDRB.

(ii) *Issues concerning the propriety of a discharge.* An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of this part. This includes an applicant's issue, submitted in accordance with § 724.802b(1), in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion). Although a numerical reference to the regulation or other sources of law alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the NDRB adequately of the basis for the applicant's position.

(iii) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to specify that each issue pertains to the propriety or the equity of the discharge. This will assist the NDRB in assessing the relationship of the issue to propriety or equity.

(4) *Citation of matter from decisions.* The primary function of the NDRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements with respect to applications received on or after November 27, 1982 apply:

(i) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(ii) If an applicant's issue cites a prior decision (of the NDRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(iii) To ensure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Corrective Board Reading Room), applicants must provide the NDRB with copies of such decisions or of the relevant portion of the treatise, manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(iv) If the applicant fails to comply with requirements in § 724.802b(4), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(c) *Identification by the NDRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under § 924.803, is made.

(1) *Issues on DD Form 293.* The NDRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein).

(2) *Amendment of issues.* The NDRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(i) Limits the NDRB's authority to question an applicant as to the meaning of such matter;

(ii) Precludes the NDRB from developing decisional issues based upon such questions;

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or

(iv) Prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the NDRB

believes that an applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the NDRB from developing its own decisional issues.

§ 724.803 The decisional document.

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(a) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

(1) Information concerning the discharge under review, including:

(i) Date (YYMMDD) of discharge;

(ii) Character of discharge;

(iii) Reason for discharge;

(iv) The specific regulatory authority under which the discharge was issued;

(v) Date (YYMMDD) of enlistment;

(vi) Period of enlistment;

(vii) Age at enlistment;

(viii) Length of service;

(ix) Periods of unauthorized absence;

(x) Conduct and efficiency ratings (numerical or narrative);

(xi) Highest rank achieved;

(xii) Awards and decorations;

(xiii) Educational level;

(xiv) Aptitude test scores;

(xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment);

(xvi) Convictions by court-martial;

(xvii) Prior military service and type of discharge received.

(2) Any other matters in the applicant's record which pertains to the discharge or the issues, or provide a clearer picture of the overall quality of the applicant's service.

(b) A list of the type of documents submitted by or on behalf of the applicant (including written briefs, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

(c) A statement whether the applicant testified, and a list of the type of witnesses, if any , who testified on behalf of the applicant.

(d) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been withdrawn or modified with the written consent of the applicant need not be listed.

(f) The response to the items submitted as issues by the applicant.

(g) A list of decisional issues and a discussion of such issues.

(h) NDRB's conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.

(2) The specific changes to be made, if any.

(i) A record of the voting, including:

(1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.

(2) The NDRB members' names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(j) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the applicant shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings

(k) The recommendation of the NDRB president when required.

(l) The addendum of the SRA when required.

(m) Index entries for each decisional issue under appropriate categories listed in the index of decisions.

(n) An authentication of the document by an appropriate official.

§ 724.804 Decision process.

(a) The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standard set forth in Subpart I.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair review. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the military department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this Manual.

(d) The NDRB shall identify and address issues after a review of the following material obtained and presented in accordance with this Manual and any implementing instructions of the NDRB: available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

(e) If an applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted and available service records.

(f) *Application of standards.* (1) When the NDRB determines that an applicant's discharge was improper, the NDRB will determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the service regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable, the provisions as to the characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

(2) When the NDRB determines that an applicant's discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and relevant regulations of the service of which the applicant was a member.

(g) Voting shall be conducted in closed session, a majority of the votes of the five members constituting the NDRB decision.

(h) Details of closed session deliberations of the NDRB are priviledged information and shall not be divulged.

(i) There is no requirement for a statement of minority views in the event of a split vote.

(j) The NDRB may request advisory opinions from appropriate staff officers of the naval service. These opinions are advisory in nature and are not binding on the NDRB in its decision-making process.

(k) The preliminary determinations required by 38 U.S.C. 3103(e) shall be made upon majority vote of the NDRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in this Manual.

§ 724.805 Response to items submitted as issues by the applicant.

(a) *General guidance.* (1) If any issue submitted by an applicant contains two or more clearly separate issues, the NDRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(2) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(3) Nothing in this paragraph precludes the NDRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

(b) *Decisional issues.* An item submitted as an issue by an applicant in accordance with this Manual shall be addressed as a decisional issue in the following circumstances:

(1) When the NDRB decides that a change in discharge should be granted, and the NDRB bases its decision in whole or in part on the applicant's issue; or

(2) When the NDRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the NDRB's disagreement on the merits with an issue submitted by the applicant.

(c) *Response to items not addressed as decisional issues.* (1) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(2) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the NDRB shall address the items submitted by the applicant under § 724.806, (Decisional Issues) unless one of the following responses is applicable:

(i) *Duplicate issues.* The NDRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(ii) *Citations without principles and facts.* The NDRB may state that the applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of § 724.802b(4).

(iii) *Unclear issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered.

(iv) *Nonspecific issues.* The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the NDRB disagrees with the applicant as to the relevance of matters set forth in the submission, the NDRB normally will set forth the nature of the disagreement with respect to decisional issues, or it will reject the applicant's position. If the applicant's submission is so general that none of those provisions is applicable, then the NDRB may state that it cannot respond because the item is not specific.

§ 724.806 Decisional issues.

(a) *General.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the NDRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(1) *Partial change.* When the decision changes a discharge, but does not

provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) *Relationship of issue of character of or reason for discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(3) *Relationship of an issue to propriety or equity.* (i) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB will consider it under both standards.

(ii) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in § 724.806a(3)(d), the NDRB is not required to consider such an issue under the equity standards.

(iii) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under § 724.806 a or b.

(iv) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends that the NDRB is required as a matter of law to follow the prior case, the decisional document shall note that the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered and addressed under the equity standards.

(v) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

(b) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors of expressly retroactive changes in policy or violations of regulations that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be set forth.

(c) *Denial of the full change requested: issues of propriety.* (1) If the decision rejects the applicant's position on an issue of propriety, of if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(2) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstances, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in § 724.806c(2) (a) and (b):

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802b(4).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with § 724.802b(4)) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the NDRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

(E) If the applicant take the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the NDRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the NDRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue.

(F) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the NDRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(d) *Denial of the full change in discharge requested when propriety is not at issue.* If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the propriety of the discharge.

(e) *Change of discharge: issues of equity.* If the NDRB concludes that a change in the discharge is warranted under the equity standards, the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed.

(f) *Denial of the full change in discharge requested: issues of equity.* (1) If the NDRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(2) The NDRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(i) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(ii) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

(A) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(B) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise indentified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(iii) If the NDRB disagrees with the postion of the applicant on an issue of equity, the following guidance applies in addition to the guidance in paragraphs above:

(A) The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(B) The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(C) The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(D) The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agrees with the applicant's position.

(E) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the NDRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(iv) When NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required however, to explain why it relied on any such factors unless the applicability or weight of such a factor is expressly raised as an issue by the applicant.

(v) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

§ 724.807 Record of NDRB proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, audio and/or videotape recordings, or a combination.

(b) At a minimum, the record will include the following:

(1) The application for review;

(2) A record of the testimony in either verbatim, summarized, or recorded form at the option of the NDRB;

(3) Documentary evidence or copies, other than the military service record considered by the NDRB;

(4) Briefs and arguments submitted by or on behalf of the applicant;

(5) Advisory opinions considered by the NDRB, if any;

(6) The findings, conclusions, and reasons developed by the NDRB;

(7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;

(8) A copy of the decisional document.

§ 724.808 Issuance of decisions following discharge review.

The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the service manager concerned.

(a) Notification to applicants, with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

(b) Notification to the service manager shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

(c) Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as to the notification of the review decision.

§ 724.809 Final disposition of the record of proceedings.

The original decisional document and all appendices thereto, shall in all cases be incorporated in the military service record of the applicant and the service record shall be returned to the custody of the appropriate record holding facility. If a portion of the original record of proceedings cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored. Other copies including any electromagnetic records, audio and/or videotape recordings or any combination thereof shall be filed in the NDRB case folder and disposed of in accordance with appropriate naval regulations.

§ 724.810 Availability of Naval Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with Subpart H of this enclosure shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying.

(1) Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(2) The NDRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint.

(c) Any other privileged or classified material contained in or appended to any documents required by this Manual to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted only if a written statement on the basis for the deletions is provided the applicant and counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) NDRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(1) The reading file index shall include, in addition to any other item determined by the NDRB, the case number, the date, character of, reason and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the FEDERAL REGISTER by the Department of the Army. The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the NDRB is present and in operation. An applicant who has requested a traveling panel review shall be advised, in the notice of such review, of the permanent index locations.

(3) The Armed Forces Discharge Review/Corrections Board Reading Room shall publish indexes quarterly for all DRBs. The NDRB shall be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. In addition, the NDRB shall be responsible for submission of new index categories based upon published changes in policy, procedures, or standards. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. When the NDRB has accepted an application, information concerning the availability of the index shall be provided in the NDRB's response to the application.

§ 724.811 Privacy Act information.

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of SECNAVINST 5211.5C shall be observed throughout the processing of a request for review of discharge or dismissal.

§ 724.812 Responsibilities of the Reading Room.

(a) Copies of decisional documents will be provided to individuals or organizations outside the NCR in response to written requests for such documents. Although the Reading Room shall try to make timely responses to such requests, certain factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties may cause some delays. A fee may be charged for such documents under appropriate DOD and Department of the Army directives and regulations. The manual that accompanies the index of decisions shall notify the public that if an applicant indicates that a review is scheduled for a specific date, an effort will be made to provide requested decisional documents before that date. The individual or organization will be advised if that cannot be accomplished.

(b) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520,
The Pentagon, Washington, D.C. 20310.

§ 724.813 The recommendation of the NDRB president.

(a) *General.* The president of the NDRB may forward cases for consideration by the Secretarial Review Authority (SRA). There is no requirement that the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in § 724.813b.

(b) *Format for recommendation.* If a recommendation is provided, it shall contain the president's view whether there should be a change in the character of or reason for discharge (or both). If the president recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the president's position on decisional issues and issues submitted by the applicant under the following guidance:

(1) *Adoption of the NDRB's decisional document.* The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this enclosure.

(2) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) *Response to issues not included in matter adopted from the majority.* The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(i) The issues on which the president's recommendation is based. Each such decisional issue shall be addressed by the president.

(ii) The president's response to items submitted as issues by the applicant.

(iii) Reasons for rejecting the conclusion of the majority with respect to the decisional document which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Such issues shall be addressed under the principles in § 724.806.

§ 724.814 Secretarial Review Authority (SRA).

(a) *Review by the SRA.* The Secretarial Review Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(i) Any specific case in which the SRA has an interest.

(ii) Any specific case that the president of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the standards set forth in this part.

(b) *Processing the decisional document.* (1) The decisional document shall be transmitted by the NDRB president under § 724.813.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion, without the participation of the applicant or the applicant's counsel:

(i) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the NDRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(ii) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. Any issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB president on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the president's recommendation.

(c) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the decision by the NDRB (or NDRB president) of the issues raised by the majority or the applicant.

(d) *The addendum of the SRA.* The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) *The SRA's decision.* The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the NDRB or the NDRB president, the decisional document shall contain a reference to the matter adopted.

(2) *Discussion of issues.* In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant and issues raised by the NDRB and the NDRB president in accordance with the following guidance:

(i) *Adoption of the NDRB president's recommendation.* The addendum may state that the SRA has adopted the NDRB president's recommendation.

(ii) *Adoption of the NDRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the NDRB.

(iii) *Adoption of specific statements from the majority or the NDRB president.* If the SRA adopts the views of the NDRB or the NDRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB president, the addendum shall set forth the modification.

(iv) *Response to issues not included in matter adopted from the NDRB or the NDRB president.* The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

(A) A list of the issues on which the SRA's decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in § 724.806F.

(B) The SRA's response to items submitted as issues by the applicant.

(3) *Response to the rebuttal.* (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in § 724.806.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material, that fact shall be noted.

(4) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the NDRB's proposed decisional document.

§ 724.815 Complaints.

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically indentified violation of 32 CFR Part 70 or any references thereto. Complaints will be reviewed pursuant to 32 CFR Part 70.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.

The objective of a discharge review is ot examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of the review and the underlying factors which aid in determining whether the standards are met shall be consistent with historical criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in a discharge. Neither the NDRB nor the Secretary of the Navy shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the NDRB shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

§ 724.902 Propriety of the discharge.

(a) A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(b) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court) the NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

(d) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the NDRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood* v. *Secre-*

tary of Defense to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An other than honorable (formerly undesirable) discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

§ 724.903 Equity of the discharge.

A discharge shall be deemed to be equitable unless:

(a) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge, if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(b) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct and proficiency ratings (numerical and narrative);

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

(vii) Level of responsibility at which the applicant served;

(viii) Other acts of merit that may not have resulted in formal recognition through an award or commendation;

(ix) Length of service during the service period which is the subject of the discharge review;

(x) Prior military service and type of discharge received or outstanding post service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(xi) Convictions by court-martial;

(xii) Records of nonjudicial punishment;

(xiii) Convictions by civil authorities while a member of the service, reflected in the discharge proceedings or otherwise noted in the service records;

(xiv) Records of periods of unauthorized absence;

(xv) Records relating to a discharge in lieu of court-martial.

(2) Capability to serve, as evidenced by factors such as:

(i) *Total capabilities.* This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given as to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(ii) *Family and personal problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(iii) *Arbitrary or capricious actions.* This includes actions by individuals in authority which constiute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge the individual or unduly influence the characterization of service.

(iv) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.

Appendix A—Policy Statement by the Secretary of Defense—Addressing Certain Categories of Discharges

Secretary of Defense memorandum of August 13, 1971, to the Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy will be in accordance with 10 United States Code 1553.

"This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971".

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

"Reference is made to Secretary Packard's memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971, subject: 'Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.'

"My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

"It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issed solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

"Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, sections 874(b), 1552 and 1553.

"This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

"Former service members requesting a review will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized."

Appendix B—Oath or Affirmation To Be Administered to Discharge Review Board Members

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

Oath/Affirmation

I, ————, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

APPENDIX C—SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD

Attachment	Form	Title
1	Letter	En Block Notification of Decision to Commander, Naval Military Personnel Command (No Change).
2	......do	En Block Notification of Decision to Commander, Naval Military Personnel Command (Change).
3	......do	En Block Notification of Decision to Commandant, Marine Corps (No Change).
4	......do	En Block Notification of Decision to Commandant, Marine Corps (Change).

NOTE: The Forms appearing in Appendix C are not carried in the Code of Federal Regulations.

APPENDIX D—VETERANS' BENEFITS

91 Stat. 1106
Pub. L. 95-126, Oct. 8, 1977
95th Congress

An Act

To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) Inserting "or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence." after "deserter," in subsection (a), and by inserting a coma and "notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10" before the period at the end of such subsection; and

(2) Adding at the end of such section the following new subsection:

"(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Veterans' Administration shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standard (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditons: and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

"(2) Notwithstanding any other provision of law—

"(A) No person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Veterans' Administration except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharged under such standards;

"(B) Such determination shall be made by such board, (i) on an expedited basis after notification by the Veterans' Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

"If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such personal shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Veterans' Administration, or the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.".

(b) (1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by subsection (a)(2) of this section of his or her right to obtain an expedited determination under section 3103(e)(2)(B)(i) of such title and of the implications of the provisions of this Act for each such person.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 3103(a), of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Veterans' Administration only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Administrator of Veterans' Affairs under section 3103 of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans' Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552 and 1553).

Section 2. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 3103(a) of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge.

Section 3. Paragraph (18) of section 101 of Title 38, United States Code, is amended to read as follows:

"(18) The term 'discharge or release' includes, (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable."

Section 4. In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Veterans' Administration determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Administrator of Veterans' Affairs shall, in keeping with the spirit and intent of this Act, not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans.

Section 5. This Act shall become effective on the date of its enactment, except that—

(1) Section 2 shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

(2) The amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law.

(A) With respect to any person who, on such enactment date is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as added by section 1(a)(2) of this Act, until, (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

(B) With respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date, the United States shall not make any claim to recover the value of any benefits so provided; and

(C) The amendments made by clause (1) of section 1(a) shall apply, (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act, had not attained general eligibility to such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons.

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Sec.

726.1 Purpose.
726.2 Scope.
726.3 Authority to appoint trustees to receive Federal moneys.
726.4 Procedures.
726.5 Records.
726.6 Travel orders.
726.7 Status of pay account.

Sec.
726.8 Procedure for designation of a trustee.
726.9 Emergency funds.
726.10 Reports and supervision of trustees.
726.11 Authority of the Judge Advocate General to issue instructions.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601-604, and 1001; 32 CFR 700.206 and 700.1202.

SOURCE: 47 FR 41559, Sept. 21, 1982, unless otherwise noted.

§ 726.1 Purpose.

This part prescribes regulations for implementation of 37 U.S.C. Chapter 11, "Payments to Mentally Incompetent Persons."

§ 726.2 Scope.

(a) 37 U.S.C. Chapter 11 grants authority, in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction, for the designation by the Department of the Navy of a trustee to receive the active duty pay and allowances, amounts due for accrued or accumulated leave, or retired pay or retainer pay, that are otherwise payable to a member who is found by competent medical authority to be mentally incapable of managing his/her affairs.

(b) The term "member" as used in this part refers to:

(1) Members of a uniformed service who are on active duty (other than for training) or who are on the retired list of that service; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 726.3 Authority to appoint trustees to receive Federal moneys.

(a) Pursuant to 37 U.S.C. 602 (1976), the Judge Advocate General and the Deputy Assistant Judge Advocate General (Civil Affairs) [hereafter referred to in this part as the DAJAG (CA)] are delegated authority to appoint trustees to receive and administer federal moneys for members of the naval service.

(b) The commanding officer of any naval medical facility may designate an officer of the command to receive and receipt for up to $30 per month from the accrued pay of a member of the naval service who has been found incapable of handling his/her own affairs and is a patient at a naval medical facility under the following conditions:

(1) A trustee has not been designated by cognizant authority and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(2) The member has no other funds available for use in his/her own behalf; and

(3) The funds are necessary for the purchase of items necessary for the comfort of the member.

This section shall be cited on the pay voucher as authority for payment and receipt of such monthly comfort money.

§ 726.4 Procedures.

(a) The commanding officer of the cognizant naval medical facility shall convene a board of not less than three medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, when there is evidence that a member of the naval service or a member of another uniformed service who is a patient in the naval medical facility may be incapable of handling his/her affairs. Membership of the board may include members of the Reserve components on active or inactive duty.

(b) At least one officer on the board, preferably a psychiatrist, shall personally observe the member and ensure that the member's medical record, particularly that portion concerning his/her mental health, is accurate and complete. Each board member shall sign the report of the board and shall certify whether the servicemember is or is not mentally capable of managing his/her affairs.

(c) The Judge Advocate General or DAJAG (CA) may direct competent authority to convene a board in accordance with this section to determine the mental capability of a member of the naval service to manage his/her affairs. In appropriate circumstances, a commanding officer or administrator of any Federal medical facility may be requested by the Judge Advocate General or other cognizant authority to convene such a board.

§ 726.5 Records.

(a) The convening authority shall forward one copy of the record of proceedings of each board convened pursuant to §726.4, above, as follows:

(1) *Naval service.* Judge Advocate General (Code 12), Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332;

(2) *Army.* Commanding General, Finance Center, U.S. Army, Indianapolis, Indiana 46249, Attention: (Central Pay Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(3) *Air Force.* Director of Military Personnel, Headquarters USAF, AFMPC, Washington, D.C. 20030;

(4) *Coast Guard.* Commandant, U.S. Coast Guard (Code C-PS/43), Washington, D.C. 20593;

(5) *National Oceanic and Atmospheric Administration (NOAA).* Director, NOAA Corps, NOAA, Rockville, Maryland 20852; and

(6) *Public Health Service.* Director, Commissioned Personnel Operations Division (OPM-OM), Room 435, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) In the case of a finding that a servicemember is not mentally capable of managing his/her affairs, the convening authority, in the forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin and such other pertinent data as may be available to assist in identification of a trustee. This additional information need not be furnished where a trustee or other legal representative has been previously designated and the designation is still in effect.

§ 726.6 Travel orders.

In appropriate cases, the Chief of Naval Personnel or Commandant of the Marine Corps shall issue travel orders to a member of the naval service to appear before an examining board convened for the purpose of determining whether the member is or is not mentally capable of managing his/her affairs. In the case of permanently retired members of the naval service, however, travel expenses in connection with an appearance before a board convened pursuant to § 726.4 shall be at no cost to the Government unless the Judge Advocate General or DAJAG (CA) determines that unusual hardship exists and directs that appropriate authority fund the travel expenses.

§ 726.7 Status of pay account.

The Judge Advocate General or DAJAG (CA) will direct appropriate disbursing officials to suspend the pay of servicemembers found to be mentally incapable of managing their affairs. Thereafter, the Judge Advocate General or DAJAG (CA) will direct payment of moneys to (a) the appointed trustee; (b) the committee, guardian, or other legal representative appointed by a court of competent jurisdiction; or (c) directly to the member following a determination that the member is capable of managing his/her affairs. Disbursing officers shall seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his/her affairs.

§ 726.8 Procedure for designation of a trustee.

Upon receipt of a report from medical authorities that a member has been found mentally incapable of managing his/her affairs, the Judge Advocate General or DAJAG (CA) shall initiate action to appoint a trustee, provided a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction. The Judge Advocate General or DAJAG (CA) may direct any appropriate Navy or Marine Corps activity to interview prospective trustees and make recommendations concerning their suitability. The interviewing officer will determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or DAJAG (CA) and ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all moneys shall be applied solely to the use and benefit of the member and his/her legal dependents and that no fee, commission, or charge, for any service performed by the trustee except for payment of the required bond, can be made from Federal moneys. The interviewing officer will forward recommendations to the Office of the Judge Advocate General for appropriate action.

§ 726.9 Emergency funds.

Until such time as a trustee is appointed, the Judge Advocate General or DAJAG (CA) may appoint the member's commanding officer or other appropriate official to receive up to $1000 due from the account of the member without the necessity of a bond. The money shall be applied for the benefit of the member and his/her legal dependents.

§ 726.10 Reports and supervision of trustees.

(a) *Annual accounting report.* The trustee designated under this chapter shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG(CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8-76) and 5800/13A (Rev. 8-76) will be provided for these reports. When requested by the Judge Advocate General or DAJAG(CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. Report Control Symbols JAG 5800-5 and 5800-5A have been assigned to the reports.

(b) *Failure to submit a report.* If an accounting is not received by the date designated by the Judge Advocate General or DAJAG(CA), or an accounting is forwarded which is unsatisfactory, the Judge Advocate General or DAJAG(CA) shall notify the trustee in writing. The notice shall inform the trustee that he or she is in violation of the regulations concerning trustees promulgated pursuant to 37 U.S.C 601-604. The notice shall further state that if a satisfactory accounting is not received by the Judge Advocate General or DAJAG(CA) within an appropriate number of days from the date of receipt of the notification, the trustee will be declared in default of the trustee agreement and shall become liable for any unaccounted for monies.

(c) *Declaration in default.* If the trustee fails to submit a satisfactory accounting within the time designated by the JAG or DAJAG(CA), the trustee shall be declared by the JAG or DAJAG(CA) to be in default of the trustee agreement.

(d) *Termination of payments.* If a trustee is declared to be in default of the trustee agreement, the Judge Advocate General or DAJAG(CA) shall request the appropriate Finance Center to terminate payments to the trustee and if necessary appoint a successor trustee.

(e) *Demand for payment.* At the time of the declaration of such default, the Judge Advocate General of DAJAG(CA) shall notify the defaulting trustee that he or she is in default of the trustee agreement. The surety for the trustee shall also be notified at this time concerning the account. The notifications to the trustee and surety shall state the reasons for default, the amount of indebtedness to the Government and shall demand payment. The notifications shall also state that if payment, in full, of the monies due the Government is not received by the Office of the Judge Advocate General, or satisfactory arrangements for repayment have not been made with an appropriate number of days from the date of receipt of the notifications, the account may be forwarded, as the Judge Advocate General or DAJAG(CA) may direct, to the Department of Justice for recovery of the monies through appropriate civil action.

(f) *Final accounting.* When payments under this chapter are terminated due to the death of the member, his or her restoration to capacity, the replacement of the trustee, or for any other reason, other than default of the trustee agreement, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG(CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

(g) *Finance Centers.* The Commanding Officer, Navy Finance Center, Commanding officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG(CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by the court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG(CA), the cognizant disbursing officer shall report all disbursements from the service member's account.

[50 FR 28402, July 12, 1985]

§ 726.11 Authority of the Judge Advocate General to issue instructions.

The Judge Advocate General and the DAJAG (CA) may issue instructions for implementation of this part.

PART 727—LEGAL ASSISTANCE

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727.2—727.4 [Reserved]
727.5 Persons eligible for assistance.
727.6 Functions of legal assistance officers.
727.7 Limitations on service provided.
727.8 Confidential and privileged character of service provided.
727.9 Referrals to civilian lawyers.
727.10 Fees, compensation, solicitation, and representation in civilian courts.
727.11 Supervision.
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727.13 Reports.
727.14 Files and records.
727.15 Liberal construction of part.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6026, Mar. 6, 1973, unless otherwise noted.

§ 727.1 Purpose.

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this part is to provide guidelines for the continuation of the program.

§§ 727.2—727.4 [Reserved]

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines prescribed in the Manual of the Judge Advocate General contemplating agreements or liaison with appropriate civilian bar officials, serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV Instruction 5350.5 series.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

(d) *Professional legal advice.* Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under Canon 3 of the Code of Professional Responsibility of the American Bar Association and particularly EC 3-2, 3-5, 3-6, and DR 3-101(A).

[41 FR 26863, June 30, 1976, as amended at 47 FR 41561, Sept. 21, 1982]

§ 727.7 Limitations on service provided.

(a) *Assistance in official military matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a serviceman accused or suspected of an offense or of conduct leading to administrative proceedings will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for a respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

[41 FR 26863, June 30, 1976]

§ 727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by § 727.13 of this part. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

[42 FR 35957, July 13, 1977]

§ 727.9 Referrals to civilian lawyers.

(a) *General.* If it is determined that the legal assistance requested is beyond the scope of this part, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent, and sympathetic counsel, or to a civilian lawyer designated by such organization.

(b) *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as a part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity. The prohibition may be waived only by the Judge Advocate General of the Navy or the Director, Naval Legal Service, as appropriate, in extraordinary circumstances on a case by case basis for inactive duty Reserve judge advocates who consulted with or advised an eligible client in an official capacity. Before a waiver may be granted, the following criteria, as well as other relevant criteria, shall be considered:

(1) Whether the waiver is specifically requested by the party concerned or an appropriate representative,

(2) Whether there is a likelihood that undue and substantial prejudice will otherwise be suffered by the party concerned,

(3) Whether adequate continued representation for compensation is otherwise reasonably available, and

(4) Whether the requested representation will violate the Code of Professional Responsibility of the American Bar Association or other applicable legal or ethical requirements.

(b) *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this part retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *Provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in § 727.9.

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6 and under guidelines prescribed in the Manual of the Judge Advocate General before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, or the Director, Naval Legal Service, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

[47 FR 41561, Sept. 21, 1982]

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of Naval Legal Service Offices, and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

[42 FR 35957, July 13, 1977]

§ 727.12 Communications.

(a) Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instruction 5330.2 of July 12, 1968. A sample of the letterhead to be used is:

Legal Assistance Office, Building 200, Washington Navy Yard, Washington, D.C. 20374, Tel: 202-433-4331.

Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

[42 FR 35958, July 13, 1977]

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of October of each year, prepare and submit to the Judge Advocate General one copy of the Legal Assistance Report (NAVJAG 5801/3 Rev. 12-78)) covering the preceding fiscal year. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG-5801-1 is assigned for this reporting requirement.

[38 FR 6026, Mar. 6, 1973, as amended at 47 FR 41561, Sept. 21, 1982]

§ 727.14 Files and records.

(a) *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

[38 FR 6026, Mar. 6, 1973, as amended at 43 FR 17355, Apr. 24, 1978]

§ 727.15 Liberal construction of part.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

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728.102 Care From Other Than Federal Sources.

AUTHORITY: The provisions of this Part 728 issued under secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 4807, sec. 4, 57 Stat. 81, secs. 5537, 6148, 6201-6203, 70A Stat. 319, 383, 387, secs. 1071-1088, 72 Stat. 1445-1450, as amended; 10 U.S.C. 1071-1088, 2104, 2107, 2109, 2110, 5537, 6148, 6201-6203; 22 U.S.C. 1158, 2357, 2504, 2505, 2507, 2522; 5 U.S.C. 8101; 24 U.S.C. 15, 34, 35; 42 U.S.C. 249, 253.

SOURCE: 50 FR 15111, Apr. 17, 1985, unless otherwise noted.

Subpart A—General

§ 728.1 Mission of Navy Medical Department Facilities.

The primary mission of Navy Medical Department facilities is to provide medical and dental care for members of the Navy and Marine corps and for members of the other uniformed services who may be sick, injured, or disabled. In addition, Navy Medical Department facilities may provide medical and dental care to dependents of military personnel, to members not on active duty, and to such other persons as authorized by law, U.S. Navy regulations, and Department of Defense directives. These authorizations also provide that Navy Medical Department facilities may sometimes be called upon to furnish medical and dental care, pursuant to the laws of humanity or principles of international courtesy, to civilians and to other persons not otherwise entitled to medical and dental care.

§ 728.2 Definitions.

Unless otherwise qualified herein, the following terms when used throughout this part are defined as follows:

(a) *Active Duty.* Full-time duty in the active military service of the United States. This includes duty on the active list; full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active Duty for Training.* Duty performed in the active military service by a member of the Reserve Components under orders by competent Federal authority for a specified period which provides for automatic reversion to inactive duty when the period of active duty is completed. Includes not only the period of time from reporting to the time of release but also the time of travel to and from the duty station, not in excess of the allowable constructive travel time.

(c) *CHAMPUS.* Civilian Health and Medical Program of the Uniformed Services.

(d) *Catchment Area.* The geographical area surrounding each USMTF as specified in the Military Health Services System (MHSS) Catchment Area Directory except for those portions listed in the Directory as excluded because of geographic barriers.

(e) *Chronic Condition.* Any medical or surgical condition marked by long duration or frequent recurrence—or likely to be so marked—which, in light of medical information available, will ordinarily resist efforts to eradicate it completely; a condition which needs health benefits to achieve or maintain stability that can be provided safely only by or under the supervision of physicians, nurses, or persons authorized by physicians.

(f) *Civilian Employee.* A nonmilitary individual employed by the Federal Government and paid from nonappropriated or appropriated funds.

(g) *Cooperative Care.* Medical services and supplies for which CHAMPUS will share in the cost under circumstances specified in § 728.4(aa), even though the patient remains under the primary control of a USMTF.

(h) *Cooperative Care Coordinator.* Designated individual in a CHAMPUS contractor's office who serves as the point of contact for health benefits advisors on all matters related to supplemental-cooperative care or services provided or ordered for CHAMPUS-eligible beneficiaries by USMTF providers.

(i) *Dental Care.* Treatment which will prevent or remedy diseases, disabilities, and injuries to the teeth, jaws, and related structures and thereby contribute to maintenance or restoration of the dental health of an individual.

(j) *Dependent.* (1) *General.* When used throughout this part in reference to other than those individuals enumerated in § 728.2(j)(2), "dependent" is defined as an individual who relies for support on an individual who is eligible for services provided for in this part or qualifies for care in naval MTFs through law or some other legal agreement.

(2) *Members or Former Members, Of.* A person who bears any of the relationships in § 728.2(j) (3), (4), (5), and (6) to:

(i) An active duty or retired member of a uniformed service.

(ii) A deceased individual who, at the time of death, was an active duty or retired member of a uniformed service.

(iii) A member or former member who:

(A) Is, or was at the time of death, entitled to retired or retainer pay or equivalent pay; or

(B) Died before attaining age 60 and at the time of death:

(*1*) Would have been eligible for retired pay under title 10 U.S.C. 1331-1337 but for the fact that he or she was under 60 years of age, and

(*2*) Had elected to participate in the Survivor Benefit Plan established under title 10 U.S.C. 1447-1455, except that

(*3*) Such dependents as enumerated in § 728.2(j) (3), (4), (5), and (6) may not be rendered care derived from the sponsor's entitlement under title 10 U.S.C. 1331-1337 until the date on which such members or former members would have attained age 60.

(3) *Spouse.* (i) Wife or husband regardless of whether actually dependent on the active duty or retired member.

(ii) Unremarried widow or widower, regardless of whether actually dependent on the active duty or retired member at the time of his or her death.

(4) *Child.* (i) A legitimate child, an illegitimate child of a male member whose paternity has been judicially determined, an illegitimate child of

record of a female member, an adopted child, or a legitimate stepchild, who is unmarried and—

(A) Under 21 years of age regardless of whether dependent on the active duty of retired member; or

(B) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of death of the sponsor, dependent on the sponsor for over one-half of his or her support; or

(C) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved by the Secretary of Defense or Secretary of Health and Human Services (formerly HEW), as applicable, or that is approved by a State agency pursuant to chapter 32 (Post-Vietnam Era Veterans' Educational Assistance), chapter 34 (Veterans' Educational Assistance), or chapter 35 (Survivors' and Dependents' Educational Assistance) of title 38 U.S.C., for the purposes of those chapters, and is, or was at the time of death of the active duty or retired member, dependent on such member for over one-half of his or her support.

(ii) An unmarried illegitimate child (not cover in § 728.2(j)(4)(i)) or illegitimate stepchild who is, or was at the time of death of the active duty or retired member, dependent on the member or retired member for more than one-half of his or her support; residing with or in a home provided by the member parent or the parent who is the spouse of the member or retired member, and is—

(A) Under 21 years of age; or

(B) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individual's 21st birthday; or

(C) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved in accordance with § 728.2(j)(4)(i)(C).

(5) *Former Spouse.* (i) An unremarried former spouse of a member or former member whose divorce became final on or after 1 February 1983 and who:

(A) On the date of the final decree of divorce, dissolution, or annulment had been married to the member or former member for a period of a least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and

(B) Does not have medical coverage under an employer-sponsored health plan.

(ii) A former spouse of a deceased retired sponsor who meets the requirements of § 728.2(j)(5)(i) may be provided medical and dental care as a dependent when the sponsor:

(A) Died before attaining age 60, and

(B) At the time of his or her death would have been eligible for retired pay under chapter 67 of title 10 U.S.C. but for the fact that such sponsor was under 60 years of age,

(C) Regardless of the fact that such sponsor did not elect to participate in the Survivor Benefit Plan established under title 10 U.S.C. 1447-1455.

(6) *Parent.* Natural parent, or bona fide adoptive parent, parent-in-law, step-parent, or step-parent-in-law who is, or was at the time of death of the active duty or retired member, dependent on the member or retired member for over one-half of such parent's support and residing in a dwelling place provided or maintained by the member. (Does not include a person who stood in loco parentis.)

(k) *Designated USTFs.* The following former U.S. Public Health Service (USPHS) facilities continue to operate as "designated USTFs" for the purpose of rendering medical and dental care to active duty members and all CHAMPUS-eligible individuals.

(1) *Hospitals.* (i) Wyman Park Health Systems, 3100 Wyman Park Drive, Baltimore, MD 21211, Telephone (301) 338-3000.

(ii) Allston-Brighton Aid and Health Group, 77 Warren Street, Boston, MA 02135. Telephone (617) 782-3400.

(iii) Hospital of St. John, 2050 Space Park Drive, Nassau Bay, TX 77058, Telephone (713) 757-7430.

(iv) Seattle Public Health Hospital 1131 14th Avenue South, Seattle, WA 98144, Telephone (206) 324-7650.

(v) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten

Island, NY 10304, Telephone (212) 447-3010.

(2) *Clinics.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103, Telephone (207) 780-3210.

(ii) Lutheran Medical Center, Downtown Health Care Services, New Post Office Bldg., W. 3rd St. & Prospect Avenue, Cleveland, OH 44113, Telephone (216) 522-4524.

(iii) St. Mary's Hospital, 440 Avenue North, Galveston, TX 77550, Telephone (713) 757-7430.

(iv) St. Joseph Ambulatory Care Center, 204 U.S. Customs Bldg., 701 San Jacinto Street, Houston, TX 77002, Telephone (713) 757-7430.

(v) Family Practice Center, Port Arthur, TX 77640, Telephone (713) 757-7430.

(l) *Disability Separation.* Temporary or permanent retirement and discharge for physical disability, with or without entitlement to receive severance pay.

(m) *Elective Care.* Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of other cognizant professional authority, can be performed at another place or time without jeopardizing life, limb, health, or well-being of the patient, e.g., surgery for cosmetic purposes and nonessential dental prosthetic appliances.

(n) *Emergency Care.* Medical treatment of patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention to prevent undue suffering or loss of life or limb and dental treatment of painful or acute conditions.

(o) *Health Benefits Advisors (HBA).* Designated individuals at naval facilities who are responsible for advising and assisting beneficiaries covered herein concerning medical and dental benefits in uniformed services facilities and under CHAMPUS. They also provide information regarding Veterans Administration, Medicare, MEDICAID, and such other local health programs as are known to be available to beneficiaries (see § 728.4(o)).

(p) *Hospitalization.* Inpatient care in a medical treatment facility.

(q) *Inactive Duty Training (drill).* A period of training for Reserve personnel on inactive duty which includes not only that time between muster and dismissal, but also the travel to or from such drills, not in excess of the allowable constructive travel time.

(r) *Indigent.* A person who has insufficient funds or income to meet the cost of necessary medical care and services is considered to be indigent (medically).

(s) *Legitimate Care.* Those medical and dental services legally performed and not contrary to governing statutes.

(t) *Maximum Hospital Benefit.* That point during inpatient treatment when the patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not directly contribute to any further substantial recovery. A patient who will continue to improve slowly over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefit.

(u) *Medical Care.* Treatment required to maintain or restore the health of an individual. Medical care may include, but is not limited to the furnishing of inpatient treatment, outpatient treatment, nursing service, medical examinations, immunizations, drugs, subsistence, transportation, and other adjuncts such as prosthetic devices, spectacles, hearing aids, orthopedic footwear, and other medically indicated appliances or services.

(v) *Medically Inappropriate.* A situation arising when denial of a Nonavailability Statement would result in significant risk to the health of a patient.

(w) *Medically Necessary.* The level of services and supplies (i.e., frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity care. Medically necessary includes the concept of appropriate medical care.

(x) *Medical Treatment Facility (MTF).* Any duly authorized medical department center, hospital, clinic, or other facility that provides medical, surgical, or dental care.

(y) *Member of a Uniformed Service.* A person appointed or enlisted in, or conscripted into a uniformed service.

(z) *Military Patient.* A member of a United States uniformed service on active duty, active duty for training, or inactive duty training (drill), or an active duty member of the armed forces of a foreign government who is receiving inpatient or outpatient care.

(aa) *Occupational Health Services.* Includes medical examinations and tests related to preemployment, preplacement, periodic, and pretermination; tests required for protecting the health and safety of naval personnel; job-related immunizations and chemoprophylaxis; education and training related to occupational health; and other services provided to avoid lost time or to improve effectiveness of employees. The latter shall include the furnishing of emergency treatment of illnesses or injuries occurring at work. Such health services shall be furnished both active duty military personnel and naval civilian employees in accordance with current directives.

(bb) *Outside the United States.* All areas except the 50 States and the District of Columbia.

(cc) *Retired Member of a Uniformed Service.* A member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, as a result of service in a uniformed service. This includes a member or former member who is:

(1) Retired for length of service;

(2) Permanently or temporarily retired for physical disability;

(3) On the emergency officers' retired list and is entitled to retired pay for physical disability;

(4) Otherwise in receipt of retired pay under 10 U.S.C. 1331-1337.

(dd) *Routine Care.* Medical and dental care necessary to maintain health or dental functions other than care of an emergency or elective nature.

(ee) *Supplemental Care or Services.* When medical or dental management is retained by a naval MTF and required care is not available at the facility retaining management, any additional material, professional diagnostic or consultative services, or other personal services ordered by qualified uniformed service providers, and obtained for the care of that patient are supplemental. See § 728.12 concerning the management of active duty member patients.

(ff) *Uniformed Services.* The Navy, Marine Corps, Air Force, Army, Coast Guard, Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

(gg) *United States.* The 50 States and the District of Columbia.

(hh) *USMTF.* Uniformed services medical treatment facility.

§ 728.3 General Restrictions and Priorities.

Naval MTFs shall provide care to all eligible beneficiaries subject to the capabilities of the professional staff and the availability of space and facilities. In those instances when care cannot be rendered to all eligible beneficiaries, the priorities in the following chart shall prevail. No distinction as to the sponsoring uniformed service shall be made when providing care or deciding priorities.

PRIORITIES FOR THE VARIOUS CATEGORIES OF PERSONNEL ELIGIBLE FOR CARE IN NAVY MEDICAL DEPARTMENT FACILITIES

Priority and category	Degree of entitlement
1A: Members of the uniformed services on active duty (including active duty for training and inactive duty training (drill)) and comparable personnel of the NATO nations meeting the conditions prescribed in this part.	See subpart B.
1B: Members of a Reserve Component of the Armed Forces and National Guard personnel not on active duty.	See subpart C.
2: Dependents of active duty members of the uniformed services, dependents of persons who died while in such a status, and the dependents of acttive duty members of NATO nations meeting the conditions prescribed in subpart E of this part.	See subparts D and E.
3: Members of the Senior Reserve Officers' Training Corps of the Armed Forces.	See § 728.23.
4: Retired members of the uniformed services and their dependents and the dependents of deceased retired members.	See subpart D.
5: Civilian employees of the Federal Government under the limited circumstances covered by the Federal Employees' Health Service Program.	See § 728.80.
6: All others, including ex-service maternity eligibles.	See subparts F and G.

§ 728.4 Policies.

(a) *Admissions to Closed Psychiatric Wards.* Patients will be admitted to closed psychiatric wards only when they have a psychiatric or emotional disorder which renders them dangerous to themselves or others, or when a period of careful closed psychiatric observation is necessary to determine whether such a condition exists. When a patient is admitted to a closed psychiatric ward, the reason for admission must be clearly stated in the patient's clinical record by the physician admitting the patient to the ward. The provisions of § 728.4(d)(3) on obtaining consent are applicable to all nonmilitary patients. These same policies apply equally in those instances when it is necessary to place a patient on an open ward under constant surveillance.

(b) *Absence From the Sick List.* See § 728.4(e), (y), and (z).

(c) *Charges and Collection.* The charges for services rendered vary and are set yearly by the Office of Management and Budget and promulgated by a yearly NAVMEDCOMNOTE 6320 (Medical, dental, subsistence rates, and hospitalization bills; cost elements of). Billing and collection actions also vary according to entitlement or eligibility and are governed by the provisions of NAVMED P-5020, Resource Management Handbook.

(d) *Consent by Nonmilitary Patients to Medical Care.* (1) Nonmilitary individuals may not be furnished medical care in any naval MTF without either their consent or the consent of a person authorized to consent on their behalf in accordance with the provisions of applicable local laws or the order of a court having jurisdiction over the individual. Consent may be either expressed or implied. This rule applies even though an individual may be entitled by law to medical care in naval MTFs; it applies worldwide, except as it may be modified by local laws or international agreements.

(2) Implied consent is one that may be derived from actions of the patient or other circumstances, even though specific words of consent are not used. For example, a patient's application for admission to an MTF is an implied consent for hospitalization; if a patient is a minor incapable of giving consent, an implied consent of the parent may be found in actions of the parent in requesting or not objecting to medical care for the minor. Moreover, consent to treatment is implied in certain emergency situations wherein a patient is incapable of giving or denying consent, and the patient's condition represents a serious or imminent threat to life, health, or wellbeing.

(3) Expressed consent involves an interchange of language by which the patient, or person authorized to act on the patient's behalf, specifically states that consent is given to proposed medical care. An expressed consent may be valid whether oral or in writing, but a written consent is required (except in emergency situations as defined in § 728.4(d)(2)) and must be recorded on Standard Form 522 (Request for Administration of Anesthesia and for Performance of Operations and Other Procedures) in connection with the following when nonmilitary patients (both inpatients and outpatients) are involved:

(i) Any major or minor surgery which involves an entry into the body, either through an incision or through one of the natural body openings.

(ii) Any procedure or course of treatment in which anesthesia is used, except dental local infiltration or dental block anesthesia, whether or not an entry into the body is involved. An SF 522 is mandatory in inhalation sedation/analgesia and intravenous sedation/ analgesia.

(iii) Any nonoperative procedure which involves more than a slight risk of harm to the patient, or which involves the risk of a change in the patient's body structure.

(iv) Any procedure where roentgen ray, radium, or other radioactive substance is used in the treatment of the patient.

(v) All procedures which involve electroshock or insulin coma therapy.

(vi) Admission of patients with psychotic disorders.

(vii) Admission of patients to closed wards.

(viii) All other procedures which, in the opinion of the attending physician or dentist, chief of service, commanding officer, or officer in charge, require a written consent. Any questions as to the necessity or advisability of obtaining a written consent from or on behalf of the patient should be resolved in favor of procuring such a consent.

(4) For a consent to be legally sufficient, whether implied or expressed, it must be given by a person legally capable of giving consent.

(i) The sufficiency of a consent by a nonmember minor to any medical examination or treatment will be determined by the statutory and judicial laws of the United States and the State in which the medical facility is located (e.g., many States allow the treatment of venereal disease with the consent of the minor alone and the parents need neither be informed nor their consent obtained). In instances where the consent of the minor alone is legally sufficient, the minor's decision authorizing or rejecting the proposed treatment is binding. In the absence of any law on the subject, it should be determined from the maturity of the minor involved whether he or she may give a legally sufficient consent. In these instances, particular attention shall be paid to the minor's age and level of intelligence and to the minor's understanding of the complicacy and seriousness of the proposed treatment. If there is a question as to the sufficiency of the minor's consent, the advice of a judge advocate or other Government attorney should be sought. Consent of the parents will be required only when it is determined that the consent of the minor alone is not legally sufficient. Even in those circumstances where the consent of the minor is not legally sufficient, the consent of the minor patient will, nevertheless, be obtained in addition to the consent of the parents in all instances in which the minor is able to understand and fully comprehend the significance of the procedure contemplated. Further, when a situation arises in which the interest of the facility and the interest of a patient or a patient's parent or guardian are adverse, the facility may have to seek a court order empowering the facility to render the necessary care (e.g., where a parent refuses, on religious grounds, to give consent to a blood transfusion for the benefit of a minor child). Application for such a court order must be made to a Federal court pursuant to 28 U.S.C. 1345, and such court must also have jurisdiction over the patient. Some States require a minor patient's parent or guardian to obtain court approval for procedures such as organ transplants, even though the interest of the facility and that of the patient, parent, or guardian are not adverse. Under these circumstances, it is the responsibility of the parent or guardian to obtain such an order and the court need not have jurisdiction over the facility.

(ii) If valid under the laws of the State in which the MTF is located, parents may grant powers of attorney to:

(A) Their mature minor children authorizing them to consent to medical care for themselves and other minor children of the family.

(B) Individuals standing in a temporary loco parentis status authorizing them to consent to medical care for minor children of the family.

(iii) Except in an emergency, when a patient for some reason other than mental incompetency is unable to respond, the consent of the spouse or next of kin must be obtained. If the spouse or next of kin cannot be reached, the question of authority or need to consent will be referred to the appropriate judge advocate or other Government attorney for advice.

(iv) When a judicial interpretation of mental incompetency has been made, consent must be obtained from the individual appointed by the court to act for the incompetent patient.

(v) When a question of mental incompetency arises and a judicial determination of mental incompetency has not been made, the question of authority to consent or render treatment will be referred to the appropriate judge advocate or other Government attorney for advice.

(vi) Without an appropriate court order or the consent of the patient or a person authorized to act on the patient's behalf, the commanding officer may temporarily detain a nonmilitary individual with a psychiatric disorder which makes the person dangerous to him or herself or to others, when such individual is found on the military reservation where the MTF is located. When an individiual, not otherwise eligible for naval MTF services, is located off the military reservation, such temporary detention should be avoided, unless medically dictated in emergency situations (as defined in § 728.4(d)(2)) where civilian services are clearly unavailable. In such an instance, if proper consent to, or authorization for admission to the facility cannot be obtained, local civilian authorities should be notified immediately, and the individual should be transferred to those authorities. The temporary involuntary detention of a nonmilitary individual should conform with local laws and statutes governing involuntary detention, particularly where the United States does not possess exclusive jurisdiction. To provide for situations herein discussed, arrangements should be made in advance with local civilian authorities to accept forthwith those nonmilitary psychotic individuals who may not be admitted to or retained in naval MTFs because of lack of consent or appropriate court order. In making these arrangements, the point should be made, if necessary, that such individuals who are not residents of the locality are entitled to the same care and treatment by local civilian authorities as would be transients or tourists not connected with the Federal Government.

(vii) Movement to or from a naval MTF of nonmilitary psychotic individuals without proper consent or court order normally will not be performed under the auspices of a naval MTF.

(viii) The validity of a court order directing involuntary confinement or treatment of a patient in any naval MTF is a matter for review, in each instance, by the appropriate judge advocate or other Government attorney.

(ix) When a written consent is required, it will be personally signed by the patient, or the person authorized to act on the patient's behalf.

(x) Consent for dental procedures which come under the provisions of § 728.4(d)(3)(i) and (ii) may be obtained at the time a course of treatment is started. One SF 522 may be used for a complete course of treatment.

(5) Consent Validity. One of the elements affecting the validity of a consent, whether implied or expressed, is whether the person giving consent understands that to which consent is being given and, to a sufficent degree, the possible consequences of the procedure for which consent is given. The physician or dentist who is to perform or supervise the performance of a procedure will counsel the patient or the consenting individual in a medically sound fashion as to the nature or expected results of the proposed procedure, and all known material risks peculiar to the proposed procedure, which in fact is attested to by the patient or person authorized to give consent and by the counseling physician or dentist on SF 522. This information must be provided to the patient or the person authorized to give consent on behalf of the patient in order for the consent to be informed. There are four generally recognized exceptions to this duty of the physician or dentist:

(i) Where the patient requires emergency treatment and time does not permit a discussion of the risks involved; and

(ii) Where, in the physician's or dentist's sound medical judgment (as concurred in by the commanding officer or chief of service), the risk of harm to the patient from such disclosure would far outweigh the benefits of a full informed consent.

(iii) When medical personnel are called upon to perform police-ordered procedures upon criminal suspects, medical personnel must follow State law regarding what procedures may be performed. When such a patient refuses to give consent, legal advice should be obtained before attempting to perform police-ordered procedures.

(iv) The last is a situation where consent may not be required. A so-called "therapeutic privilege" to withhold information from a patient may be recognized to exist in those situations where it is believed that full disclosure would have a detrimental effect on the patient; i.e., where it is believed that full disclosure would result in the patient being unable to make a rational decision, where disclosure would interfere or complicate continued treatment of the patient, or where disclosure would damage the patient psychologically. Even though courts have acknowledged the existence of this privilege in theory, they are reluctant to apply it to actual situations. Only in extreme cases, where the medical record sets forth fully those circumstances giving rise to the health care provider's belief that disclosure would be detrimental to the patient, is it likely that the "therapeutic privilege" would be upheld. Fear or belief that a patient might decide to forego treatment if disclosure of attendant risks were made is insufficient to trigger operation of the privilege. Judicial interpretation of the privilege has suggested that, when it is believed that disclosure would be detrimental to the patient, the only legally acceptable alternative to obtaining consent from the patient might be consent from the patient's family. Thus, while there may be a technical recognition of the "therapeutic privilege" to withhold information from the patient in certain situations, this privilege affords little or no protection for the health care provider who fails to obtain informed consent.

(e) *Convalescent Leave.* Convalescent leave, a period of authorized absence granted to active duty members under medical care when such persons are not yet fit for duty, may be granted by a member's commanding officer or the hospital's commanding officer in accordance with the following:

(1) Unless otherwise indicated, such leave shall be granted only when recommended by COMNAVMEDCOM, Washington, DC, through action taken upon the report by a medical board, or the recommended findings of a phyical evaluation board or higher authority.

(2) Member's commanding officer (upon advice of attending physician); commanding officers of Navy, Army, or Air Force medical facilities; commanders of regional medical commands for persons hospitalized in designated USTFs or in civilian facilities within their respective areas of authority; and managers of Veterans Administration hospitals within the 50 United States or in Puerto Rico may grant convalescent leave to active duty naval patients, with or without reference to a medical board, physical evaluation board, or higher authority provided the:

(i) Convalescent leave is being granted subsequent to a period of hospitalization.

(ii) Member is not awaiting disciplinary action or separation from the service for medical or administrative reasons.

(iii) Medical officer in charge:

(A) Considers the convalescent leave beneficial to the patient's health.

(B) Certifies that the patient is not fit for duty, will not need hospital treatment during the contemplated convalescent leave period, and that such leave will not delay final disposition of the patient.

(3) When considered necessary by the attending physician and approved on an individual basis by the commander of the respective geographic regional medical command, convalescent leave in excess of 30 days may be granted. This authority may not be redelegated to hospital commanding officers. Member's permanent command must be notified of such extensions (see MILPERSMAN 3020360).

(4) Care shall be exercised in granting convalescent leave to limit the duration of such leave to that which is essential in relation to diagnosis, prognosis, estimated duration of treatment, and probable final disposition of the patient.

(5) Upon return from convalescent leave:

(i) One copy of original orders of officers, bearing all endorsements, shall be forwarded to the Commander, Naval Military Personnel Command (COMNAVMILPERSCOM) (NMPC-4) or the Commandant of the Marine Corps (CMC), as appropriate.

(ii) An entry shall be made on the administrative remarks page (page 13 for Navy personnel) of the service records of enlisted personnel that convalescent leave was granted and showing the dates of departure and return.

(6) If considered beneficial to the patient's health, commanding officers of hospitals may grant convalescent leave as a delay in reporting back to the parent command.

(f) *Cosmetic Surgery.* (1) Defined as that surgery which is done to revise or change the texture, configuration, or relationship of contiguous structures of any feature of the human body which would be considered by the average prudent observer to be within the broad range of "normal" and acceptable variation for age or ethnic origin, and in addition, is performed for a condition which is judged by competent medical opinion to be without potential for jeopardy to physical or mental health of an individual.

(2) Commanding officers will monitor, control, and assure compliance with the following cosmetic surgery policy:

(i) Certain cosmetic procedures are a necessary part of training and retention of skills to meet the requirements of certification and recertification.

(ii) Insofar as they meet minimum requirements and serve to improve the skills and techniques needed for reconstructive surgery, the following cosmetic procedures may be done as low priority surgery when time and space are available.

(A) Cosmetic facial rhytidectomies (face lifts) shall be part of all training programs required by certifying boards.

(B) Cosmetic augmentation mammaplasties will be done only by properly credentialed surgeons and residents within surgical training programs to meet requirements of certifying boards.

(g) *Cross-Utilization of Uniformed Services Facilities.* To provide effective cross-utilization of medical and dental facilities of the uniformed services, eligible persons, regardless of service affiliation, will be given equal opportunity for health benefits. Catchment areas (zone boundaries), designated by zip codes, have been established by the Department of Defense for each USMTF (see § 728.2(d)). Eligible beneficiaries residing within such a catchment area are expected to utilize that inpatient facility for care. EXCEPTION: Dental care, other than emergency treatment, for members of the Army and Air Force shall be provided only to those members who are either on active duty in localities where their own dental services are not available, or to those assigned to detached duty with the Navy. Provisions shall be made to assure that:

(1) Eligible beneficiaries residing in the catchment area served by a USMTF not of the sponsor's own service may obtain care at that facility or at a facility of the sponsor's service located in another catchment area.

(2) If the facility to which an eligible beneficiary applies cannot furnish the needed care, the other facility or facilities in overlapping catchment areas will be contacted to determine whether care can be provided thereat.

(h) *Disengagement.* Applicable only to CHAMPUS-eligible individuals.

(1) Discontinuance of medical management by naval MTFs for only a specific episode of care. (Patient or sponsor should be advised to return to the naval MTF for any care required subsequent to receiving the care for which disengagement is made.) Considered accomplished only after alternative sources of care and attendant costs, if applicable, have been fully explained to patient or sponsor.

(2) Patients referred to civilian sources for total care (disengaged) under the CHAMPUS will be issued a Nonavailability Statement (DD Form 1251) in accordance with § 728.34, when appropriate. CHAMPUS-eligible patients referred for total care, who do not otherwise require a DD Form 1251 (referred for outpatient care or those referred whose residence is outside the catchment area of all USMTFs), will be given a properly completed DD Form 2161, Referal For Civilian Medical Care, which clearly indicates that the patient is disengaged for total care under CHAMPUS. CHAMPUS-eligible beneficaries will be disengaged for services under CHAMPUS when:

(i) Required services are beyond the capability of the naval MTF and such services cannot be appropriately provided through one of the alternative means listed in § 728.4(aa), or

(ii) The naval MTF cannot effectively provide the required service or manage the overall course of care even if augmented by services procured from other Government or civilian sources utilizing naval MTF operation and maintenance funds as authorized in § 728.4(aa).

(i) *Domiciliary/Custodial Care.* The type of care designed essentially to assist an individual in meeting the normal activities of daily living, i.e., services which constitute personal care such as help in walking and getting in or out of bed, assistance in bathing, dressing, feeding, preparation of special diets, and supervision over medications which can usually be self-administered and which does not entail or require the continuing attention of trained medical or paramedical personnel. The essential characteristics to be considered are the level of care and medical supervision that the patient requires, rather than such factors as diagnosis, type of condition, or the degree of functional limitation. Such care will not be provided in naval MTFs except when required for active duty members of the uniformed services.

(j) *Emergency Care.* Patients authorized only emergency care and those admitted as civilian emergencies will be treated only during the period of the emergency. Action will be initiated to effect appropriate disposition of such patients as soon as the emergency period ends.

(k) *Evaluation After Admission.* Each patient will be evaluated as soon as possible after admission and reevaluation will continue until disposition is made. Each patient's probable type and date of disposition will be anticipated and necessary processing by the various medical and administrative entities will take place concurrently with the treatment of the patient. It is especially important that the medical disposition decision be made as early as possible for U.S. military patients inasmuch as immediate transfer to a VA medical center or to a VA spinal cord injury center may be in the best interest of the patient (see BUMEDINST 6320.11D). The disposition decision for military personnel of NATO nations shall be made in conformance with § 728.42(d).

(l) *Extent of Care.* Eligible persons shall be provided medical and dental care to the extent it is authorized, required, and available. When a person is accepted for care, all care and adjuncts thereto, such as nonstandard supplies, as determined by the commanding officer to be necessary, will be provided from resources available to the commanding officer unless specifically prohibited elsewhere in this instruction. EXCEPTION: Hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to the officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to the accompanying dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *provided,* that such services shall be permitted only where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities. When a patient has been accepted and required care is beyond the capabilities of the accepting naval MTF, the commanding officer thereof will arrange for the required care by one of the means shown below. The method of choice will be based upon professional considerations and travel economy.

(1) Transfer the patient in accordance with § 728.4(bb).

(2) Procure from civilian sources the necessary material or professional personal services required for the proper care and treatment of the patient. Payment for the cost of such care or services depends upon the category of beneficiary being treated (see § 728.4(aa)).

(3) The care authorized in § 728.4(l)(2) will normally be accomplished in the naval MTF. However, when such action is not feasible, supplementation may be obtained elsewhere. Patients may be sent to other Federal or civilian facilities for specific treatment or services under § 728.4(l)(3) *provided* they remain under the medical management of the commanding officer of the sending facility during the entire period of care.

(m) *Family Planning Services.* Family planning services shall be provided in accordance with the provisions of SEC NAVINST 6300.2A.

(n) *Grouping of Patients.* Hospitalized patients will be grouped according to their requirements for housing and medical care, including nursing care, and will be furnished quarters, facilities, and professional supervision on that basis. Patients who must be retained under medical supervision (medical hold) solely for administrative reasons or for medical conditions which can be treated on a clinic basis will be provided quarters and messing facilities, where practicable, separately from other hospitalized patients. Medical care for such patients will be furnished on a periodic clinic appointment basis (see § 728.4(q) for handling enlisted convalescent patients). Maximum use will be made of administrative personnel in the supervision of such patients.

(o) *Health Benefits Advising.* (1) *General.* A Health Benefits Advising Program if not established must be implemented at all commands having one or more medical officers. The number of health benefits advisors (HBAs) of a command shall be commensurate with counseling and assistance requirements. The purpose of the program is to provide health benefits information and counseling to beneficiaries of the Uniformed Services Health Benefits Program (USHBP) and to others who may or may not qualify for care in USMTFs. Office location of HBAs, their names, and telephone numbers shall be widely publicized locally. HBAs at shore establishment activities shall report workload and any changes in HBA personnel and telephone numbers on NAVMED 6320/23, Health Benefits Advisor Workload. The report (report symbol MED 6320-25) shall be submitted to the Commander, Naval Medical Command, MEDCOM-333, Washington, DC 20372 quarterly with the information for each preceding month of the quarter in its proper column. If assistance is required, contact MEDCOM-333 on Autovon 294-1127 or commercial (202) 653-1127. In addition to the duties described in § 728.4(o)(2), HBAs shall:

(i) Maintain a depository of up-to-date officially supplied information for availability to all beneficiaries.

(ii) Provide information and guidance to beneficiaries and generally support the medical and dental staff by providing assistance to eligible beneficiaries seeking or obtaining services from USMTFs, civilian facilities, VA facilities, Medicare, MEDICAID, and other health programs.

(iii) Assure that when a referral or disengagement is required:

(A) Patients are fully informed that such action is taken to provide for their immediate medical or dental requirements and has no bearing on whether care may be available in the naval MTF for other aspects of current or other future medical conditions.

(B) CHAMPUS-eligible patients are provided the services and counseling outlined in § 728.4(o)(2) *prior* to their departure from the facility when such beneficiaries are referred or disengaged because care required is beyond the naval MTF's capability. In an emergency, or when the patient or sponsor cannot be seen by the HBA prior to leaving, these services and counseling assistance will be accomplished as soon thereafter as possible.

(2) *Counseling and Assisting CHAMPUS-Eligible Individuals.* HBAs, as a minimum, will:

(i) Explain alternatives available to the patient.

(ii) If appropriate, explain CHAMPUS as it relates to the particular circumstance, including the cost-sharing provisions applicable to the patient, allowable charges, provider participation, and claim filing procedures. The patient or sponsor must be fully informed that when a patient is disengaged for care under CHAMPUS or when cooperative care is to be considered for payment under the provisions of § 728.4(aa) (5) and (6), the naval MTF is not responsible for monetary amounts above the CHAMPUS-determined allowable charge or for charges CHAMPUS does not allow.

(iii) Explain why the naval MTF is paying for the supplemental care, if appropriate (see § 728.4(aa) (3) and (4)). Complete a DD Form 2161, Referral For Civilian Medical Care, marking the appropriate source of payment with the concurrence of the naval MTF commanding officer or CO's designee. Explain to the patient or sponsor how the bill will be handled.

(iv) Brief patient or sponsor on the use of the DD Form 2161 in USMTF payment procedures and CHAMPUS claims processing, as appropriate. Provide sufficient copies of DD Form 2161 and explain that CHAMPUS contractors will return claims submitted without required DD Form 2161. Obtain signature of patient or sponsor on the form.

(v) Advise patient or sponsor on arrangements for a completed copy of the DD Form 2161 to be returned to the naval MTF for payment, if appropriate, and inclusion in patient's medical record.

(vi) Arrange for counseling from appropriate sources when the patient is eligible for VA, Medicare, or MEDICAID benefits.

(vii) Serve as liaison between civilian providers and naval MTF on administrative matters related to the referral and disengagement process.

(viii) Serve as liaison between naval MTF and cooperative care coordinators on matters relating to care provided or recommended by naval MTF providers, as appropriate.

(ix) Explain why the patient is being disengaged and, in accordance with § 728.4(h)(2), provide a DD Form 1251, Nonavailability Statement, or DD Form 2161, Referral For Civilian Medical Care, as appropriate.

(p) *Immunizations.* Immunizations shall be administered in accordance with the provisions of BUMEDINST 6230.1H, unless otherwise stipulated.

(q) *Medical Holding Companies.* Medical holding companies (MHC) have been established at designated activities to facilitate handling of enlisted convalescent patients whose medical conditions are such that, although they cannot be returned to full duty, they can perform light duty ashore commensurate with their condition while completing their medical care on an outpatient basis. Where feasible, such patients shall be processed for transfer.

(r) *Notifications.* (1) *General.* The interests of the Navy, Marine Corps, and DOD have been adversely affected by past procedures which emphasized making notifications only when an active duty member's condition was classed as either seriously ill or injured or classed as very seriously ill or injured. However, temporary disabilities which preclude communication with the next of kin have generated understandable concern and criticism, especially when emergency hospitalization has resulted. Accordingly, naval MTFs shall effect procedures to make notifications required below upon admission of the members specified. The provisions of § 728.4(r) supplement articles 1810520 and 4210100 of the Naval Military Personnel Manual and chapter 5 of Marine Corps Order P3040.4A, Marine Corps Casualty Procedures Manual; they do not supersede them.

(2) *Active Duty Flag or General Officers and Retired Marine Corps General Officers.* Message reports (Hospitalized Active Duty Flag or General Officer and Retired Marine Corps General Officer Report, MED 6320-10) shall be submitted to the Commander, Naval Medical Command, Washington, DC containing the following upon admission of subject officers:

(i) *Admission.* The initial report shall include:

(A) Officer's name, grade, social security number, and designator.

(B) Duty assignment in ship or station, or other status.

(C) Date of admission.

(D) Present condition, stating if serious or very serious.

(E) Diagnostic number only (see § 728.4(r)(2)(v)), prognosis, and estimated period of hospitalization.

(ii) *Progress Reports.* Submission frequency and content shall be at the discretion of the commanding officer. Changes in condition or status, however, shall be reported promptly.

(iii) *Termination Report.* A message shall be submitted upon termination of hospitalization which provides appropriate details for informational purposes.

(iv) *Information Addresses.* When members of the uniformed services are hospitalized, the following shall be made information addressee(s) on all messages, as appropriate:

(A) Navy—Chief of Naval Operations and Commander, Naval Military Personnel Command

(B) Marines—Chief of Naval Operations (for active duty members only) and the Commandant of the Marine Corps

(C) Army—Deputy Chief of Staff for Personnel, Department of the Army, (General Officer Management Office)

(D) Air Force—Surgeon General, United States Air Force

(v) *Privacy Act.* The right to privacy of the individual for whom hospitalization reports are made shall be safeguarded as required by the Privacy Act, implemented in the Department of the Navy by SECNAVINST 5211.5C, U.S. Navy Regulations, the Manual of the Judge Advocate General, the Marine Corps Casualty Procedures Manual, and the Manual of the Medical Department. To prevent possible invasion of privacy, the diagnosis required in § 728.4(r)(2) shall be reported only in International Classification of Diseases Annotated (ICDA) code designator.

(3) *Active Duty Members.* As part of the admission procedure, all patients shall be encouraged to communicate expeditiously and regularly with their next of kin. When a patient's incapacity makes timely personal communication impractical, i.e., fractures, burns, eye pathology, psychiatric or emotional disorders, etc., the notification process shall be initiated by MTF personnel *unless* the patient specifically declines such notification or where it is clear that the next of kin already has knowledge of the admission. Once notification has been made, progress reports shall be made by the facility until the patient is again able to communicate with the next of kin.

(i) *Navy Personnel.* When Navy personnel are admitted, the following notification procedures shall be effected.

(A) Outside the Contiguous 48 States and the District of Columbia. When the next of kin has accompained the patient on the tour of duty and is in the immediate area, hospital personnel shall notify the next of kin in person, by telephone, telegraph, or by other expenditious means. If the next of kin is located in the 48 contiguous United States or the District of Columbia, telegraphic means shall be used to notify COMNAVMILPERSCOM who will provide notification to the next of kin.

(B) Within the Contiguous 48 States and the District of Columbia. Hospital personnel shall notify the next of kin in person, by telephone, telegraph, or by other expeditious means. This shall include notification of the next of kin upon arrival of all Navy patients received in the medical air-evacuation system.

(ii) *Marine Corps Personnel.* When Marine Corps personnel are admitted, the following notification procedures shall be effected.

(A) Within the Contiguous 48 States and the District of Columbia. Directors of Marine Corps districts have responsibility for in-person notification of the next of kin of seriously ill or injured and very seriously ill or injured Marine Corps personnel. Naval MTF personnel shall assure that liaison is established with the appropriate director when such personnel are admitted. Naval MTF personnel shall notify only the appropriate Marine Corps district by telephone and request that cognizance be assumed for in-person initial notification of the next of kin of those Marine Corps patients admitted with an incapacity that makes personal and timely communication impractical and for those arriving via the medical air-evacuation system.

(B) Outside the Contiguous 48 States and the District of Columbia. Casualty notification for Marine Corps personnel hospitalized in naval MTFs outside the contiguous 48 States and the District of Columbia will be made to the Commandant of the Marine Corps (Code MSPA-1).

(C) Within and Outside the United States. The Commandant of the Marine Corps desires and encourages medical officers to communicate directly with the next of kin only *after* the initial in-person notification has been effected by the appropriate Marine Corps district office and notification thereof has been effected to the MTF treating the patient.

(iii) *Nonactive Duty Patients.* At the discretion of individual commanding officers, the provisions of § 728.4(r)(3) may be extended to the admission of nonactive duty patients; e.g., dependents of members on duty overseas

(iv) *Other Uniformed Services Patients.* Liaison shall be established with other uniformed services to assure proper notification upon admission of active duty members of other services.

(4) *Messages.* (i) *Content.* Contents of message traffic (and telephonic notifications) should be phrased in lay terms and should provide sufficient details of the patient's condition, prognosis, and diagnosis. When appropriate for addressal, psychiatric and other sensitive diagnoses shall be related with discretion. When indicated, specific comment should also be included as to whether the presence of the next of kin is medically warranted.

(ii) *Information Addressee.* The Naval Medical Command requires information copies of messages *only* when a patient has been placed on the seriously ill or injured or the very seriously ill or injured list.

(s) *Outpatient Care.* Whenever possible, diagnostic procedures, preoperative and post operative care, surgical care, convalescence, and followup observations and treatment will be accomplished on an outpatient basis.

(t) *Performance of Duties While In An Inpatient Status.* U.S. military patients may be assigned duties in and around naval MTFs when such duties will be, in the judgement of the attending physician, of a therapeutic value. Physical condition, past training, and other acquired skills must all be considered before assigning any patient a given task. Patients will not be assigned duties which are not within their capabilities or which require more than a very brief period of orientation.

(u) *Prolonged Definitive Medical Care.* Prolonged definitive medical care in naval MTFs will not be provided for U.S. military patients who are unlikely to return to duty. The time at which a patient should be processed for disability separation must be determined on an individual basis, taking into consideration the interest of the patient as well as those of the Government. A long-term patient roster will be maintained and updated at least once monthly to enable commanding officers and other appropriate staff members to monitor the progress of all patients with 30 or more continuous days of hospitalization. The roster will include basic patient identification data (name, grade or rate, register number, ward or absent status, clinic service, and whether assigned to a medical holding company), projected disposition (date, type, and profile), diagnosis, and cumulative hospital days (present facility and total).

(v) *Remediable Physical Defects of Active Duty Members.*

(1) *General.* When a medical evaluation reveals that a Navy or Marine Corps patient on active duty has developed a remediable defect while on active duty, the patient will be offered the opportunity of operative repair or other appropriate remediable treatment, if it is medically indicated.

(2) *Refusal of Treatment.* In accordance with MANMED art. 18-15, when a member refuses to submit to recommended therapeutic measures for a remediable defect or condition which has interfered with the member's performance of duty and following prescribed therapy, the member is expected to be fit for full duty, the following procedures shall apply:

(i) After being counseled concerning the matter, any member of the naval service who refuses to submit to recommended medical, surgical, dental, or diagnostic measures, other than routine treatment for minor or temporary disabilities, shall be transferred to a naval MTF for further evaluation and appearance before a medical board.

(ii) The board shall study all pertinent information, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(iii) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Refusal of major surgical operations may be reasonable or unreasonable, according to the circumstances. The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks should all be taken into consideration.

(iv) Where surgical procedures are involved, the board's report shall contain answers to the following questions:

(A) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(B) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(C) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and the member's reason for refusing treatment, is the refusal reasonable or unreasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for whatever weight may appear appropriate.)

(v) If a member needing surgery is mentally competent, surgery shall not be performed over the member's protestation.

(vi) In medical, dental, or diagnostic situations, the board should show the need and risk of the recommended procedure(s).

(vii) If a medical board decides that a diagnostic, medical, dental, or surgical procedure is indicated, these findings must be made known to the patient. The board's report shall show that the patient was afforded an opportunity to submit a written statement explaining the grounds for refusal, and any statement submitted shall be forwarded with the board's report. The patient should be advised that even if the disability originally arose in line of duty, its continuance would be attributable to the member's unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(viii) The patient shall also be advised that:

(A) Title 10 U.S.C. 1207 precludes disposition under chapter 61 of 10 U.S.C. if such a member's disability is due to intentional misconduct, willful neglect, or if it was incurred during a period of unauthorized absence.

(B) Benefits from the Veterans Administration will be dependent upon a finding that the disability was incurred in line of duty and is not due to the member's willful misconduct.

(ix) The Social Security Act contains special provisions relating to benefits for "disabled" persons and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and to have incurred the condition "not in the line of duty."

(x) The board's report shall be forwarded direct to the Central Physical Evaluation Board except in those instances when the convening authority desires that the medical board report be referred for Departmental review.

(xi) In accordance with MANMED art. 18-15, a member who refuses medical, dental, or surgical treatment for a condition that existed prior to entry into the service (EPTE defect), not aggravated by a period of active service but which interferes with the performance of duties, should be processed for reason of physical disability, convenience to the Government, or enlisted in error rather than under the refusal of treatment provisions. Procedures are delineated in BUMEDINST 1910.2G and SECNAVINST 1910.4.

(3) *Other Uniformed Services Patients.* When a patient of another service is found to have a remediable physical defect developed in the military service, the matter will be referred to the nearest headquarters of the service concerned.

(w) *Responsibilities of the Commanding Officer.* In connection with the provisions of this instruction, commanding officers of naval MTFs shall:

(1) Determine which persons within the various categories authorized care in a facility will receive treatment in, be admitted to, and be discharged from that specific facility.

(2) Supervise care and treatment, including the employment of recognized professional procedures.

(3) Provide each patient with the best possible care in keeping with ac-

cepted professional standards and the assigned primary mission of the facility.

(4) Provide for counseling patients and naval MTF providers when care required is beyond the naval MTF's capability. This shall include:

(i) Establishing training programs to acquaint naval MTF providers and HBAs with the uniformed services' referral for supplemental/cooperative care or services policy outlined in § 728.4(aa).

(ii) Implementing control measures to ensure that:

(A) Providers requesting care under the provisions of § 728.4(aa) are qualified to maintain physician case management when required.

(B) Care requested under the supplemental/cooperative care criteria is medically necessary, legitimate, and otherwise permissible under the terms of that part of the USHBP under which it will be considered for payment.

(C) Providers explain to patients the reason for the referral and the type of referral being made.

(D) Attending physicians properly refer beneficiaries to the HBA for counseling and services in accordance with § 728.4(o).

(E) Uniform criteria is applied in determining cooperative care situations without consideration of rate, grade, or uniformed service affiliation.

(F) All DD Form 2161's are properly completed and approved by the commanding officer or designee.

(G) A copy of the completed DD Form 2161 is returned to the naval MTF for inclusion in the medical record of the patient.

(x) *Sick Call.* A regularly scheduled assembly of sick and injured military personnel established to provide routine medical care. Subsequent to examination, personnel medically unfit for duty will be admitted to an MTF or placed sick in quarters; personnel not admitted or placed sick in quarters shall be given such treatment as is deemed necessary. When excused from duty for medical reasons which do not require hospitalization, military personnel may be authorized to remain in quarters, not to exceed 72 hours.

(y) *Sicklist—Authorized Absence From.* Commanding officers of naval MTFs may authorize absences of up to 72 hours for dependents and retired personnel without formal discharge from the sicklist. When absences are authorized in excess of 24 hours, subsistence charges or dependent's rate, as applicable, for that period shall not be collected and the number of reportable occupied bed days shall be appropriately reduced. Prior to authorizing such absences, the attending physician shall advise patients of their physical limitations and of any necessary safety precautions, and shall note in the clinical record that patients have been so advised. For treatment under the Medical Care Recovery Act, reporting shall be consistent with § 728.4(bb).

(z) *Subsisting Out.* A category in which officer and enlisted patients on the sicklist of a naval MTF may be placed when their daily presence is not required for treatment nor examination, but who are not yet ready for return to duty. As a general rule, patients placed in this category should reside in the area of the facility and should be examined by the attending physician at least weekly. Enlisted personnel in a subsisting out status should be granted commuted rations.

(1) Granting of subsisting out privileges is one of many disposition alternatives; however, it is recommended that other avenues (medical holding company, convalescent leave, limited duty, etc.) be considered before granting this privilege.

(2) Naval MTF patients in a subsisting out status should not be confused with those enlisted personnel in a rehabilitation program who are granted liberty and are drawing commuted rations, but are required to be present at the treating facility during normal working hours. These personnel are not subsisting out and must have a bed assigned at the naval MTF.

(3) Naval MTF patients who are required to report for examinations or treatment more often than every 48 hours should not be placed in a subsisting out status.

(aa) *Supplemental/Cooperative Care or Services.* (1) *General.* When such services as defined in § 728.2(ee) are rendered to other than CHAMPUS-eligible individuals, the cost thereof is chargeable to the operation and maintenance funds available for the operation of the facility requesting the care or services. EXCEPTION: See § 728.12 for care of active duty members. Cooperative care applies to CHAMPUS-eligible patients receiving inpatient or outpatient care in a USMTF who require care or services beyond the capability of that USMTF. The following general principles apply to such CHAMPUS-eligible patients:

(i) *Cooperation of Uniformed Services Physicians.* USMTF physicians are required to cooperate in providing CHAMPUS contractors and OCHAMPUS additional medical information. SECNAVINST 5211.5C delineates policies, conditions, and procedures that govern safeguarding, using, accessing, and disseminating personal information kept in a system of records. Providing information to CHAMPUS contractors and OCHAMPUS shall be governed thereby.

(ii) *Physician Case Management.* Where required by BUMEDINST 6320.58 (CHAMPUS Regulation; implementation of), uniformed services physicians are required to provide case management (oversight) as would an attending or supervising civilian physician.

(iii) *CHAMPUS-Authorized Providers.* CHAMPUS contractors are responsible for determining whether a civilian provider is CHAMPUS-authorized and for providing such information, upon request, to USMTFs.

(iv) *Psychiatric/Psychotherapeutic Services.* If psychiatric care is being rendered by a psychiatric or clinical social worker, a psychiatric nurse, or a marriage and family counselor, and the uniformed services facility has made a determination that it does not have the professional staff competent to provide required physician case management, the patient may be (partially) disengaged for the psychiatric or psychotherapeutic service, yet have the remainder of required medical care provided by the naval MTF.

(v) *Forms and Documentation.* A DD Form 2161, Referral For Civilian Medical Care, will be provided to each patient who is to receive supplemental or cooperative care or services. When supplemental care is required under the provisions of § 728.4(aa)(3) and (4), the provisions of § 728.4(aa)(3)(iii) shall apply. When cooperative care or services are required under the provisions of § 728.4(aa)(5) and (6), the provisions of § 728.4(aa)(5)(iv) shall apply.

(vi) *Clarification of Unusual Circumstances.* Commanding officers of naval MTFs shall submit requests for clarification of unusual circumstances to OCHAMPUS or CHAMPUS contractors via the Commander, Naval Medical Command (MEDCOM-33) for consideration.

(2) *Care Beyond a Naval MTF's Capability.* When, either during initial evaluation or during the course of treatment of CHAMPUS-eligible beneficiaries, it is determined that required services are beyond the capability of the naval MTF, the commanding officer will arrange for the services from an alternate source in the following order, subject to restrictions specified. The provisions of § 728.4(aa)(2)(i) through (iii) must be followed before either supplemental care, authorized in § 728.4(aa)(4), is considered for payment from Navy Operations and Maintenance funds, or cooperative care, authorized in § 728.4(aa)(6), is to be considered for payment under the terms of CHAMPUS.

(i) Obtain from another USMTF or other Federal MTF the authorized care necessary for continued treatment of the patient within the naval MTF, when such action is medically feasible and economically advantageous to the Government.

(ii) When the patient is a retired member or dependent, transfer in accordance with § 728.4(cc)(3(i), (ii), (iii), or (iv), in that order. When the patient is a dependent of a member of a NATO nation, transfer in accordance with § 728.4(cc)(4)(i), (ii), or (iii), in that order.

(iii) With the patient's permission, the naval MTF may contact State programs, local health agencies, or health foundations to determine if benefits are available.

(iv) Obtain such supplemental care or services as delineated in § 728.4(aa)(4) from a civilian source using local operation and maintenance funds, or

(v) Obtain such cooperative care or services as delineated in § 728.4(aa)(6) from a civilian source under the terms of CHAMPUS.

(3) *Operation and Maintenance Funds.* When local operation and maintenance funds are to be used to obtain supplemental care or services, the following guidelines are applicable:

(i) Care or services must be legitimate, medically necessary, and ordered by a qualified USMTF provider.

(ii) The naval MTF must make the necessary arrangements for obtaining the required care or services from a specific source of care.

(iii) Upon approval of the naval MTF commanding officer or designee, the patient or sponsor will be provided a properly completed DD Form 2161, Referral For Civilian Medical Care. The DD Form 2161 will be marked by the health benefits advisor or other designated individual to show the naval MTF as the source of payment. Copy must also be forwarded to the MTF's contracting or supply officer who is the point of contact for coordinating obligations with the comptroller and thus the proper processing for payment.

(iv) Care on an inpatient or outpatient basis will be authorized for the minimum period necessary for the civilian provider to perform the specific test, procedure, treatment, or consultation requested. Patients receiving inpatient services in civilian medical facilities will not be counted as an occupied bed in the naval MTF, but will be continued on the MTF's inpatient census and pay patients will continue to be charged the USMTF inpatient rate appropriate to their patient category.

(v) Naval MTF physicians will maintain professional contact with civilian providers.

(4) *Care and Services Authorized.* Referral to civilian sources for supplemental care or services, using local operation and maintenance funds, can be made for the following types of care or services:

(i) All specialty consultations for the purpose of establishing or confirming diagnoses or recommending a course of treatment.

(ii) All diagnostic tests, diagnostic examinations, and diagnostic procedures (including genetic tests and CAT scans), ordered by qualified USMTF providers.

(iii) Prescription drugs and medical supplies.

(iv) Civilian ambulance service ordered by USMTF personnel.

(5) *CHAMPUS Funds.* When payment is to be considered under the terms of CHAMPUS for cooperative care, even though the beneficiary remains under naval MTF control, the following guidelines are applicable:

(i) Charges for care will be processed under the terms of CHAMPUS.

(A) If the charge for the covered service or supply is above the CHAMPUS-determined reasonable charge, the direct care system will not assume any liability on behalf of the patient where a civilian provider is concerned, although a USMTF physician recommended or prescribed the service or supply.

(B) Payment consideration for all care or services meeting cooperative care criteria will be under the terms of CHAMPUS and payment for such care or services will not be made from naval MTF funds. Conversely, any care or services meeting naval MTF supplemental care or services payment criteria will not be considered under the terms of CHAMPUS.

(ii) Care must be legitimate and otherwise permissible under the terms of CHAMPUS and must be ordered by a qualified USMTF provider.

(iii) USMTF personnel will provide assistance to beneficiaries referred or disengaged under CHAMPUS. Although USMTF personnel are not authorized to refer beneficiaries to a specific civilian provider for care under CHAMPUS, the health benefits advisor is authorized to contact the cooperative care coordinator of the appropriate CHAMPUS contractor for assistance in determining authorized providers with the capability of providing the required services. Such information may be provided to the beneficiary. Beneficiaries will also be encouraged to obtain required medical services only from providers willing to participate in the CHAMPUS. Subject to the availability of space, facilities, and capabilities of the staff, USMTFs will provide consultative and such other ancillary assistance as required by the civilian provider selected by the beneficiary.

(iv) Such patients who are referred (versus disengaged) to civilian sources under the terms of CHAMPUS for cooperative care will be provided a properly completed DD Form 2161, Referral For Civilian Medical Care. The DD Form 2161 will be marked by the health benefits advisor, or other designated individual, to show CHAMPUS as the source of payment consideration. All such DD Form 2161's must be approved by the commanding officer or designee. The patient will be given sufficient copies to ensure a copy of the DD Form 2161 accompanies each CHAMPUS claim submitted for this treatment. Patients will be advised that CHAMPUS contractors will return claims received without the DD Form 2161. Also advise patients to arrange for return of a completed copy of the DD Form 2161 to the naval MTF for inclusion in their medical record.

(v) Such patients receiving inpatient or outpatient care or services will pay the patient's share of the costs as specified under the terms of CHAMPUS for their beneficiary category. Patients receiving inpatient services will not be continued on the naval MTF's census and will not be charged the USMTF inpatient rate.

(vi) Certain ancillary services authorized under CHAMPUS require physician case management during the course of treatment. USMTF physicians will manage the provision of ancillary services by civilian providers when such services are obtained under the terms of CHAMPUS. Examples include physical therapy, private duty (special) nursing, rental or lease/purchase of durable medical equipment, and services under the CHAMPUS Program for the Handicapped. USMTF providers exercising physician case management responsibility for ancillary services under CHAMPUS will be subject to the same benefit limitations and certification of need requirements applicable to civilian providers under the terms of CHAMPUS for the same types of medical care. USMTF physicians exercising physician case management responsibility will maintain professional contact with civilian providers of care.

(6) *Care and Services Authorized.* Referral to civilian sources for cooperative care or services can be made for the following under the terms of CHAMPUS:

(i) Authorized nondiagnostic medical services such as physical therapy, speech therapy, radiation therapy, and private duty (special) nursing.

(ii) Preauthorized (by OCHAMPUS) adjunctive dental care, including orthodontia related to surgical correction of cleft palate.

(iii) Durable medical equipment. (CHAMPUS payment will be considered only if the equipment is not available on a loan basis from the naval MTF.)

(iv) Prosthetic devices (limited benefit), orthopedic braces and appliances.

(v) Optical devices (limited benefit).

(vi) Civilian ambulance service to a uniformed service facility when service is ordered by other than direct care personnel.

(vii) All care under the CHAMPUS Program for the Handicapped.

(viii) Psychotherapeutic or psychiatric care.

(ix) Except for those types of care or services delineated in § 728.4(aa)(4), all other CHAMPUS authorized medical services not available in the naval MTF (for example, neonatal intensive care).

(bb) *Third Party Liability Case.* In accordance with chapter 24, section 2403, JAG Manual, naval MTFs shall use the following guidelines to complete and submit a NAVJAG 5890/12, Hospital and Medical Care, 3rd Party Liability Case, when a third party may be liable for the injury or disease being treated:

(1) *Preparation.* The front of NAVJAG 5890/12 shall be used by all naval MTFs to report the value of medical care furnished to any patient when (i) a third party may be legally liable for causing the injury or disease, or (ii) when a Government claim is possible under workmen's compensation, no-fault insurance (see responsi-

bilities for apprising the insurance carrier in § 728.4(bb)(5)), or under medical payments insurance (e.g., in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG 5890/12 shall show the patient the Privacy Act statement printed at the bottom of the form and shall have the patient sign his or her name beneath the statement.

(2) *Submission.* (i) *Naval Patients.* The completed front side of the NAVJAG 5890/12 shall be submitted to the appropriate action JAG designee listed in section 2401 of the JAG Manual at the following times for naval patients:

(A) *Initial.* An initial submission shall be made as soon as practicable after a patient is admitted for any period of inpatient care, or if it appears that more than 7 outpatient treatments will be furnished. This submission should not be delayed pending the accumulation of all potential charges from the treating facility. This submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available), should be appended to the form.

(B) *Interim.* Interim submissions shall be made every 4 months after the initial submission until the patient is transferred or released from the facility, or changed from an inpatient status to an outpatient status.

(C) *Final.* A final submission shall be made upon completion of treatment or upon transfer of the patient to another facility. The facility to which the patient is transferred should be noted on the form. Report control symbol 5890-1 is assigned to this report.

(ii) *Nonnaval Patients.* When care is provided to personnel of another Federal agency or department, that agency or department generally will assert any claim in behalf of the United States. In such instances, the NAVJAG 5890/12's (initial, interim, and final) shall be submitted directly to the appropriate of the following addressees:

(A) *U.S. Army.* Commanding general of the Army or comparable area commander in which the incident occurred.

(B) *U.S. Air Force.* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided.

(C) *U.S. Coast Guard.* Commandant (G-LCL/43), U.S. Coast Guard, 2100 Second Street, S.W., Washington, DC 20593.

(D) *Department of Labor.* The appropriate Office of Workers' Compensation Programs (OWCP).

(E) *Veterans Administration.* Director of the Veterans Administration hospital responsible for medical care of the injured party.

(F) *Department of Health and Human Services (DHHS).* Regional attorney's office in the area where the incident occurred.

(3) *Supplementary Documents.* An SF 502 should accompany the final submission in all cases involving inpatient care. Additionally, when Government care exceeds $1,000, inpatient facilities should complete and submit the back side of NAVJAG 5890/12 to the action JAG designee. On this part of the form, the determination of "patient status" may be based on local hospital usage.

(4) *Health Record Entries.* Copies of all NAVJAG 5890/12's shall be retained in the Health Record of the patient. Action JAG designees shall be notified immediately when a patient receives additional treatment subsequent to the issuance of a final NAVJAG 5890/12 if the subsequent treatment is related to the condition which gave rise to the claim.

(5) *No-Fault Insurance.* When no-fault insurance is or may be involved, the naval legal service office at which the JAG designee is located shall be responsible for apprising the insurance carrier that the Federal payment for the benefits of this instruction are secondary to any no-fault insurance coverage available to the injured individual.

(6) *Additional Guidance.* Chapter 24 of the JAG Manual and BUMEDINST

5890.1A contain supplemental information.

(cc) *Transfer of Patients.* (1) *General.* All patients will be treated at the lowest echelon equipped and staffed to provide necessary care; however, when transfer to another MTF is considered necessary, Government transportation shall be used when available. Medical regulating shall be accomplished in accordance with the provisions of OPNAVINST 4630.25B and BUMEDINST 6320.1D.

(2) *U.S. Military Patients.* U.S military patients will not be retained in acute care MTFs longer than the minimum time necessary to attain the mental or physical state required for return to duty or separation from the service. When required care is not available at the facility providing area inpatient care, patients will be transferred to the most readily accessible USMTF or designated USTF possessing the required capability. Transportation of the patient and a medical attendant or attendants, if required, is authorized at Government expense. The administrative procedures outlined in BUMEDINST 6320.11D shall be followed when:

(i) A patient has received the maximum benefit of hospitalization in a naval MTF but requires a protracted period of nursing home type care. The Veterans Administration can provide this type care or arrange for it from a civilian source.

(ii) It is determined that there is or may be spinal cord injury necessitating immediate medical and psychological attention. The VA is staffed and equipped to provide all necessary care in the most expeditious manner.

(iii) A determination has been made by the Secretary concerned that a member on active duty has a drug dependency or drug abuse disability.

(3) *Retired Members and Dependents.* When a retired member or a dependent requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF located in an overlapping catchment area of the transferring facility if either has the required capability.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF having the required capability, regardless of its location.

(iii) Arrange for transfer to the Veterans Administration MTF nearest the patient's residence if the patient is a retired member.

(iv) Provide assistance in releasing the patient to a civilian provider of the patient's choice under the terms of Medicare, if the patient is entitled. Beneficiaries entitled to Medicare, Part A, because they are 65 years of age or older or because of a disability or chronic renal disease, lose CHAMPUS eligibility but remain eligible for care in USMTFs.

(v) If the patient is authorized benefits under CHAMPUS, disengage from medical management and issue a Nonavailability Statement (DD Form 1251) in accordance with the provisions of § 728.34, for care under CHAMPUS. This step should only be taken after due consideration is made of the supplemental/cooperative care policy addressed in § 728.4(aa).

(4) *Dependents of Members of NATO Nations.* When a dependent, as defined in § 728.41, of a member of a NATO nation requires care beyond the capabilities of the facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF having the required capability if it is located in an overlapping catchment area of the transferring facility.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF having the required capability, regardless of its location.

(iii) Effect disposition in accordance with § 728.42(d).

(5) *Others.* Section 34 of title 24, United States Code, provides that hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to the officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to the dependents of such persons, and in

emergencies to such other persons as the Secretary of the Navy may prescribe: *provided,* that such services shall be permitted only where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities. In addition, the hospitalization of such persons in a naval MTF is limited by section 35 of title 24, United States Code, to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Section 35 of title 24 also limits dental care for such persons to treatment that is an adjunct to inpatient hospital care and excludes any dental prosthesis or orthodontia. The transfer and subsequent treatment of such patients shall be in accordance with the aforementioned provisions of law.

(dd) *Verification of Patient Eligibility.* (1) *General.* Defense Enrollment Eligibility Reporting System (DEERS) eligibility verification checks shall be used in conjunction with the identification card system as a basis for determining eligibility for medical and dental care in USMTFs. For other than emergency care, patients are required to have a valid ID card in their possession and, under the circumstances described in § 728.4(dd)(1)(ii), are also required to meet certain DEERS criteria before treatment or services are rendered. Although DEERS and the ID card system are related , there may be instances where a beneficiary is in possession of an apparently valid ID card and the DEERS data base shows that eligibility has been terminated or vice versa. Consequently, eligibility indication in one system cannot override indication of ineligibility in the other without some other type of collateral documentation. Until the vast majority of eligible beneficiaries are included in the data base, dependents receiving DEERS checking shall be deemed ineligible for the reasons stated in § 728.4(dd)(3)(i)(A), (B), (C), (D), and (E).

(i) *Priorities.* With the following initial priorities, DEERS eligibility checks shall be conducted with a CRT terminal, single-digit dialer telephone, or special 800 number provided for the specific purpose of DEERS checking to:

(A) Confirm beneficiary eligibility.

(B) Determine whether a beneficiary is enrolled.

(C) Identify any errors on the data base.

(ii) *Minimum Checking Requirements.* The minimum DEERS eligibility checking requirements are:

(A) Twenty five percent of all outpatient visits.

(B) One hundred percent of all admissions.

(C) One hundred percent of all dental visits by nonactive duty patients to dental treatment facilities in areas designated as dentally underserved.

(D) One hundred percent of pharmacy outpatients presenting prescriptions written by a civilian provider.

(2) *Identification Cards.* All individuals, including members of the uniformed services in uniform, shall provide valid identification when requesting health benefits, except as indicated in § 728.4(dd)(3). Although a DD Form 1173 (Uniformed Services Identification and Privilege Card) may be issued to children under 10 years of age, under normal circumstances they are not required. Accordingly, certification and identification of children under 10 years of age are the responsibility of the member or retired member, accompanying parent, legal guardian, or acting guardian. Either the DD Form 1173 issued the spouse of a member or former member or the identification card of the member or former member (DD Form 2, DD Form 2 (Ret), Form PHS-1866-1, or Form PHS-1866-3 (Ret)) is acceptable for the purpose of establishing the eligibility of a child under 10 years of age.

(i) The fact that the word "indefinite" may appear in the space for the expiration date on a *member's* card does not lessen its acceptability for identification of a child.

(ii) To be valid, a dependent's DD Form 1173 *must* have an expiration date. Should a DD Form 1173 be presented with an expiration date of "indefinite", it is invalid and shall not be honored. Furthermore, such a card shall be confiscated and forwarded to the Commander, Naval Military Personnel Command, (NMPC (641D)/Pers 7312), Department of the Navy, Washington, DC 20370 for investigation and final disposition. If emergency treatment is necessary for such a person, it shall be rendered with action and followup action initiated in accordance with the provisions of NAVMED P-5020.

(3) *Identification Procedures.* Although the most widely recognized and acceptable forms of identification are DD Form 1173, DD Form 2, Form PHS-1866-1, and Form PHS-1866-3 (Ret), individuals presenting for care without such identification may be rendered care upon presentation of other identification as outlined in this part. Under the circumstances enumerated, the following procedures shall be followed when individuals present without the required proof of eligibility or when a DEERS check does not establish eligibility as long as a clear audit trail is maintained to support required actions and followup actions in each instance.

(i) *Minimum Requirements.* Patients presenting at USMTFs are required to be processed for DEERS eligibility verification in accordance with minimum checking requirements described in § 728.4(dd)(1)(ii). Routine nonemergency care will be denied, unless eligibility can be determined through other appropriate means (see § 728.4(dd)(3)(iii)), when a DEERS verification check is performed and eligibility cannot be verified for any of the following reasons:

(A) Sponsor not enrolled.

(B) Sponsor has separated from active duty and is no longer entitled to benefits.

(C) Spouse has a final divorce decree from sponsor and not entitled to continued eligibility as a former spouse.

(D) Dependent child is married.

(E) Dependent becomes an active duty member of a uniformed service. (This would only apply to CHAMPUS benefits since the former dependent becomes entitled to direct care benefits in his or her own right as an active duty member.)

(ii) *Emergency Situations.* Admission or treatment shall be initiated and satisfactory collateral identification, i.e., official orders, letters, or other documentation may be accepted in lieu of an identification card or in lieu of a positive verification through a DEERS check. For dependents, collateral documentation must clearly show the relationship of the dependent to an eligible sponsor. If an emergency admission or emergency outpatient treatment is accomplished for an individual whose proof of eligibility is in question, the provisions of NAVMED P-5020 shall be initiated to minimize the write-off of uncollectible accounts. NAVMED P-5020 also specifies that followup action shall be aggressively pursued to recoup costs of care when the facility has not been reimbursed as a result of the initial action taken to collect costs due.

(iii) *Nonemergency Situations.* (A) When a prospective patient cannot present required identification and the DEERS verification process does not verify eligibility, the facility shall require the signing of a statement by the member, patient, patient's parent, legal guardian, or acting guardian attesting to the fact that eligibility has been established in accordance with appropriate directives and stating the reason identification is not in his or her possession. Form NAVMED 6320/9, Dependent's Eligibility for Medical Care, shall be used to document such instances. The aforementioned responsible individual shall be apprised of the provisions on the form NAVMED 6320/9 requiring proof of eligibility within 2 working days. Persons refusing to sign the certification on the NAVMED 6320/9 shall be denied treatment or admission in nonemergency situations. If proof of eligibility is not received by the end of the second working day after treatment is rendered, action shall be taken in accordance with the provisions of NAVMED P-5020 to recoup the cost of care rendered.

(B) Possession of an ID card alone does not constitute sufficient proof of eligibility when the DEERS check does not verify eligibility. What constitutes sufficient proof will be determined by the reason the patient failed the DEERS check (see § 728.4(dd)(3)(i)). For example, the groups most expected to fail DEERS eligibility checks are members who are recent accessions and their dependents, Guard or Reserve members recently activated for training periods of 30 to 180 days and their dependents, and parents and parents-in-law with expired cards.

(*1*) When recent accessions are called to active duty or National Guard or Reserve Units are called to active duty for a period of 30 days or more and their dependents do not yet have DD Form 1173's, satisfactory collateral identification may be accepted in lieu thereof, i.e., official documents which establish the individual's status as a dependent of a member of a unit called to duty for a period which is not specified as 30 days or less or a telephone call to a unit orderly room or personnel office to verify that the claimed sponsor is assigned to that unit. For a child, the collateral documentation shall include satisfactory evidence that the dependent is within age limiting criteria outlined in § 728.2(j)(4). A dependent's eligibility, under the provisions of § 728.4(dd)(3)(iii)(B)(*1*), commences on the first day of the sponsor's active service and ceases as of midnight on the last day of active service.

(*2*) When parents or parents-in-law (including step-parents and step-parents-in-law) request care in naval MTFs with invalid (expired) DD Form 1173's, care shall be rendered if they or their sponsor sign a statement that an application has been submitted for a new DD Form 1173, that the beneficiary is dependent upon the service member for over one-half of his or her support, and that there has been no material change in the beneficiary's circumstances since the previous determination of dependency and issuance of the expired card. This statement shall be placed in the beneficiary's medical record. The patient or sponsor should be informed that if eligibility is not reinstated, the facility will initiate action to recoup the cost of care. Action and followup action shall be initiated and aggressively pursued in accordance with the provisions of NAVMED P-5020.

(C) When it becomes necessary to make a determination of eligibility on other categories of individuals not covered in § 728.4(dd)(2), patient affairs personnel shall be requested to obtain a determination from the purported sponsoring agency, if appropriate. When it is necessary to treat or admit a person who is not verified as eligible by the DEERS check and cannot otherwise present proof of eligibility for care at the expense of the Government, care shall not be denied based solely on the lack of verification of eligibility through DEERS. In such instances the procedures of NAVMED P-5020 shall be followed to minimize, to the fullest extent possible, the write-off of uncollectible accounts.

(iv) *Appointments.* To prevent difficulties for the MTF, DEERS checks of prospective patients with future appointments made through a central appointment desk or clinic appointment desk are necessary. Without advanced DEERS checking, patients could arrive at a clinic with an ID card but may fail the DEERS check or arrive without an ID card but is identified in the DEERS check as being eligible. Records, including the full social security number, of central appointment systems and clinic appointment systems shall be passed daily to the DEERS representative for a prospective DEERS check. This will enable appointment clerks to notify those with appointments of any apparent problem and refer them to the appropriate authority to resolve the problem prior to the appointment.

(v) *Retrospective Processing.* Medical services daily logs for walk-in patients, emergencies, or patients replacing last minute appointment cancellations shall be passed to the DEERS representative for retrospective batch processing. For DEERS processing, the last four digits of a social security number are insufficient. Accordingly, when restrospective processing may be necessary, it is essential that the full social security number is included in the daily log for each patient.

Subpart B—Members of the Uniformed Services on Active Duty

§ 728.11 Eligible Beneficiaries.

(a) A member of a uniformed service, as defined in subpart A, who is on active duty is entitled to and shall be provided medical and dental care and adjuncts thereto. For the purpose of this part, the following are also considered on active duty:

(1) Members of the National Guard in active Federal service pursuant to a "call" under 10 U.S.C. 3500 or 8500.

(2) Midshipmen of the United States Naval Academy.

(3) Cadets of the United States Military Academy.

(4) Cadets of the Air Force Academy.

(5) Cadets of the Coast Guard Academy.

(b) The following categories of personnel who are on active duty are entitled to and shall be provided medical and dental care and adjuncts thereto to the same extent as is provided for active duty members of the Regular service (except reservists when on active duty for training (ACDUTRA) as delineated in § 728.21).

(1) Members of the Reserve components.

(2) Members of the Fleet Reserve.

(3) Members of the Fleet Marine Corps Reserve.

(4) Members of the Reserve Officers' Training Corps.

(5) Members of all officer candidate programs.

(6) Retired members of the uniformed services.

§ 728.12 Extent of Care.

Members who are away from their duty stations or are on duty where there is no MTF of their own service may receive care at the nearest available Federal MTF (including designated USTFs) having the capability to provide the required care. Care shall be provided without regard to whether the condition for which treatment is required was incurred or contracted in line of duty.

(a) *All Active Duty Members.* (1) All eligible beneficiaries covered in this subpart are entitled to and shall be rendered the following treatment and services upon application to a naval MTF whose mission includes the rendering of the care required. This entitlement provides that when required care and services are beyond the capabilities of the facility to which the members applies, the commanding officer of that facility shall arrange for care from another USMTF, designated USTF, or other Federal source or may authorize and arrange for direct utilization of supplemental services and supplies from civilian non-Federal sources. The cost of services from civilian non-Federal sources shall be borne by the facility's operation and maintenance funds.

(i) Necessary hospitalization and other medical care.

(ii) Occupational health services as defined in § 728.2(aa).

(iii) Necessary prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and other orthopedic appliances (see subpart H). When these items need repair or replacement and it is determined that the items were not damaged or lost through negligence, repair or replacement is authorized at Government expense.

(iv) Routine dental care. EXCEPTION: Other than emergency dental treatment for members of the Army and Air Force shall be provided only to those who are either on active duty in localities where their own dental services are not available, or to those assigned to detached duty with the Navy (MANMED art. 6-98(1)(e)).

(2) When a USMTF, with a mission of providing the care required, releases the medical management of an active duty member of the Navy, Marine Corps, Army, or Air Force, the resulting civilian health care costs will be paid by the referring facility. The member's uniformed service will be billed for care provided by the civilian facility only when the referring MTF is not organized nor authorized to provide needed health care (see 732 of this chapter for naval members). Saturation of service or facilities does not fall within this exception. When a naval MTF retains medical management, the costs of supplemental care purchased from civilian sources is paid from funds available to operate the MTF which manages care of the patient.

(b) *Maternity Episode for Active Duty Female Members.* A pregnant active duty member who lives outside the MHSS catchment area of all

USMTFs is permitted to choose whether she wishes to deliver in a closer civilian hospital or travel to the USMTF for delivery. If such a member chooses to deliver in a naval MTF, makes application, and presents at that facility at the time for delivery, the provisions of § 728.12(a) apply with respect to the furnishing of needed care, including routine newborn care (i.e., nursery, newborn examination, PKU test, etc.); arrangements for care beyond the facility's capabilities; or the expenditure of funds for supplemental care or services. Expenses incurred for the infant in USMTFs or civilian facilities (once the mother has been admitted to the USMTF) shall be paid from funds available for the care of active duty members, unless the infant becomes a patient in his or here own right either through an extension of the birthing hospital stay because of complications, subsequent transfer to another facility, or subsequent admission. If the Government is to assume financial responsibility for:

(1) Care of pregnant members residing within the MHSS catchment area of a uniformed services hospital or in the catchment area of a designated USTF, such members are required to:

(i) Make application to that facility for care, or

(ii) Obtain authorization, in accordance with part 732 of this chapter for delivery in a civilian facility.

(2) Non-Federal care of pregnant members residing outside catchment areas of USMTFs, the member must request and receive authorization in accordance with part 732 of this chapter.

(c) *Reserve and National Guard Personnel.* In addition to those services covered in § 728.12 (a) and (b), Reserve and National Guard personnel are authorized the following under conditions set forth. (See § 728.25 for additional benefits for National Guard personnel.)

(1) Personnel whose units have an active Army mission of manning missile sites are authorized spectacle inserts for protective field masks.

(2) Personnel assigned to units designated for control of civil disturbances are authorized spectacle inserts for protective field masks M17.

§ 728.13 Application for Care.

Possession of an ID card (a green colored DD Form 2 (with letter suffix denoting branch of service), Armed Forces Identification Card; a green colored PHS 1866-1, Identification Card; or a red colored DD Form 2 Res (Reservists on active duty for training)) alone does not constitute sufficient proof of eligibility. Accordingly, a DEERS check shall be made in accordance with § 728.4(dd) before care, other than emergency care, is rendered to the extent authorized.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Programs, and National Guard Personnel

§ 728.21 Navy and Marine Corps Reservists.

(a) *Scope.* This § 728.21 applies to reservists ordered to active duty for training or inactive duty training (drill) as those terms are defined in subpart A. Reservists on extended active duty shall be treated as members of the Regular service in accordance with subpart B.

(b) *Entitlement.* (1) *Reservists on Active Duty for Training (ACDUTRA).* (i) Pursuant to 10 U.S.C. 1074(a), reservists who sustain injury, contract disease, or otherwise become ill while on active duty for training are entitled to medical and dental care to the same extent as members of the Regular service during the training period (see subpart B) subject to the provisions of § 728.21(d).

(ii) Pursuant to 10 US.C. 6148(a), reservists who are disabled from an injury incurred in line of duty while on active duty for training for any period of time are entitled to medical and dental care in USMTFs and designated USTFs beyond the period of training to the same extent as members of the Regular service (see subpart B) subject to the provisions of § 728.21(d).

(iii) Pursuant to 10 U.S.C. 6148(d), reservists ordered to active duty for training and reservists ordered to involuntary active duty for training for any period of time who become disabled as a result of illness or disease contracted in line of duty while so employed are entitled to medical and dental care in USMTFs beyond the period of training subject to the provisions of § 728.21(d). Such care, however, shall not extend beyond 10 weeks without either authorization from Commander, Naval Medical Command or upon approval of a medical board. When reservists require care for an extended period of time under 10 U.S.C. 6148(d), not in excess of 6 months, the provisions of subpart I are applicable.

(2) *Reservists Performing Inactive Duty Training (drill).* (i) Pursuant to 10 U.S.C. 6148(a), reservists ordered to perform inactive duty training (drill) for any period of time who are disabled in line of duty from injury sustained while so employed are entitled to medical and dental care during and beyond the training period to the same extent as members of the Regular service (see subpart B) subject to the provisions of § 728.21(d).

(ii) Pursuant to 10 U.S.C. 6148(d), reservists ordered to perform inactive duty training (drill) for any period of time who become ill or contract disease in line of duty while so employed are entitled to medical and dental care during the period of training. Beyond the training period, medical and dental care shall be provided in accordance with § 728.21(b)(1)(iii) and § 728.21(b)(2)(iii), including subpart I.

(iii) Pursuant to 10 U.S.C. 1074a, members of the uniformed services are entitled to medical and dental care for an injury incurred or aggravated while the member is traveling directly to or from a place at which the member is to perform, or has performed, inactive duty training, provided:

(A) The injury is not incurred nor aggravated as a result of the member's own gross negligence or misconduct.

(B) The care rendered is limited to that appropriate for treatment of the injury until the resulting disability cannot be materially improved by further hospitalization or treatment.

(3) *Questionable Circumstances.* In situations involving questionable circumstances, referral to the office of medical affairs or office of dental affairs is appropriate. If necessary, make referral to the Naval Medical Command (MEDCOM-33 for medical and MEDCOM-32 for dental) on determinations of entitlements.

(c) *Line of Duty.* For the purpose of this subpart C, an injury, illness, or disease which is incurred or becomes manifest while a reservist is employed in the performance of active duty for training (including authorized leave and liberty), or inactive duty training (drill), will be considered to have been incurred in line of duty (LOD) unless the condition was incurred as the result of the reservist's own misconduct or under other circumstances enumerated in JAG Manual, chapter VIII. While the LOD investigation is being conducted, such reservists remain entitled to care. If the investigation determines that the injury or illness was not incurred in line of duty, the reservist shall be charged at the civilian humanitarian nonindigent rate if futher care is required in naval MTFs. While reservists on active duty for training are authorized care for all conditions which are incurred or become manifest while en route to or from such training, reservists enroute to or from inactive duty training (drill) may only be rendered care as a result of injuries. (See DOD Military Pay and Allowances Entitlement Manual for the allowable constructive travel time.)

(d) *Treatment and Services Authorized.* Reservists covered by this subpart may be provided medical and dental care subject to the following:

(1) The following treatment or services are not authorized routinely and therefore must be approved by either the appropriate office of medical affairs or office of dental affairs, or the Commander, Naval Medical Command (MEDCOM-33 for medical and MEDCOM-32 for dental), prior to initiation of services.

(i) Conditions that existed prior to a reservist's period of training duty.

(A) Remediable physical defects.

(B) Remediable treatment for other conditions.

(C) Elective surgery.

(ii) All dental care other than emergency treatment and that treatment necessary to correct an injury incurred in the line of duty.

(2) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that are lost or have become damaged during training duty, not through the negligence of the individual, may be repaired or replaced at Government expense.

(e) *Authorization for Care.* (1) Reservists covered by this subpart may be provided inpatient or outpatient care during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see subpart G) pending final determination of eligibility.

§ 728.22 Members of Other Reserve Components of the Uniformed Services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40-3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168-6, Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, such authorization shall be obtained from the reservist's unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers upon presentation of a written request from the Commissioned Personnel Operations Division, OPM/OAM, 5600 Fishers Lane, Rockville, MD 20852.

§ 728.23 Reserve Officers' Training Corps (ROTC).

(a) *Eligible Beneficiaries.* (1) Members of the Senior Reserve Officers' Training Corps of the Armed Forces including students enrolled in the 4-year Senior ROTC Program or the 2-year Advanced Training Senior ROTC Program.

(2) Designated applicants for membership in the Navy, Army, and Air Force Senior ROTC Programs during their initial 6-weeks training period (practice cruises or field training).

(3) Medical, dental, pharmacy, veterinary or science allied to medicine students who are commissioned officers of a reserve component of an Armed Force who have been admitted to and training in a unit of a Senior Reserve Officers' Training Corps.

(b) *Extent of Care.* (1) While attending or en route to or from field training or practice cruises:

(i) Medical care for a condition incurred without reference to line of duty.

(ii) Routine dental care. EXCEPTION: See § 728.12(a)(4) for Army and Air Force beneficiaries.

(iii) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that have become damaged or lost during training duty, not through the negligence of the individual, may be repaired or replaced as necessary at Government expense.

(iv) Care of remediable physical defects, elective surgery or other remediable treatment for conditions that existed prior to a period of training duty are not authorized without approval from the appropriate office of medical affairs or office of dental affairs, or from the Commander, Naval Medical Command (MEDCOM-33 for medical and MEDCOM-32 for dental).

(v) Medical examinations and immunizations.

(vi) ROTC members are authorized continued medical care, including hospitalization, upon expiration of their field training or practice cruise period, in accordance with the provisions of § 728.21(b)(1) (ii) and (iii) and § 728.22.

(2) While attending a civilian educational institution:

(i) Medical care, including hospitalization, for a condition incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for the purposes of making visits of observation, including participation in service-sponsored sports, recreational, and training activities.

(ii) Medical examinations, including hospitalization necessary for the proper conduct thereof.

(iii) Required immunizations, including hospitalization for severe reactions therefrom.

(c) *Authorization.* A letter of authorization will be prepared by the individual's commanding officer and addressed to the commanding officer of the MTF concerned.

(d) *ROTC Members as Beneficiaries of the Office of Workers' Compensation Programs (OWCP).* Under circumstances described therein, members of the ROTC shall be rendered care as outlined in § 728.53 as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Officer Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of § 728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs, including members of the Women Officer's Training Class, are authorized admission to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual's commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is deemed necessary for the proper conduct of the special physical examinations. Hospitalization should be kept to a minimum and treatment other than for humanitarian reasons, except as provided herein, is not authorized.

§ 728.25 Army and Air Force National Guard Personnel.

(a) *Medical Care.* Upon presentation of a letter of authorization, naval MTFs may render care as set forth in AR 40-3 (Medical, Dental, and Veterinary Care) and AFR 168-6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who are not in a duty status. The authorizing letter shall include the name, social security number, grade, and organization of the patient; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will state that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical care. Entitlement determinations are a responsibility of the parent service.

(b) *Dental Care.* Dental care is limited to that adjunctive to the medical condition upon which eligibility is based and in emergencies.

(c) *Physical Examinations.* AR 40-3 and AFR 168-6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit's commanding officer, naval MTFs may perform the requested physical examination in accordance with the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible Beneficiaries.

(a) *Retired Members of the Uniformed Services.* Individuals defined in § 728.2(cc).

(b) *Dependents of.* (1) Members of the uniformed services ordered to active duty for more than 30 days.

(2) Retired members of the uniformed services, including retired and former members who are in receipt of retired pay under 10 U.S.C. 1331-1337.

(3) Members or former members who:

(i) Are, or were at the time of their deaths, entitled to retired or retainer pay or equivalent pay; or

(ii) Died before attaining age 60 and at the time of their deaths:

(A) Would have been eligible for retired pay under 10 U.S.C. 1331-1337 but for the fact they were under 60 years of age, and

(B) Had elected to participate in the Survivor Benefit Plan established under 10 U.S.C. 1447-1455, except that

(*1*) Dependents, other than former spouses, who are otherwise eligible may not be rendered care derived from their sponsor's entitlements under 10 U.S.C. 1331-1337 until the date on which such members or former members would have attained age 60.

(*2*) Former spouses, eligible in accordance with § 728.2(j)(5) are entitled regardless of the fact that their sponsor did not elect to participate in the Survivor Benefit Plan established under 10 U.S.C. 1447-1455.

(4) Members of a uniformed service ordered to active duty for more than 30 days who died while on that duty.

(5) Deceased retired members.

§ 728.32 Health Benefits Authorized.

(a) *Retired Members.* Retired members are authorized the same medical and dental benefits as active duty members subject to the availability of space, facilities, and the capabilities of the professional staff and the priorities listed in § 728.3, except that

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles are authorized when required to satisfy patient need. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Occupational type spectacles, such as aviation, industrial safety, double segment and mask insert, will not be furnished by military ophthalmic laboratories for retired military personnel (BUMEDINST 6810.4G).

(b) *Dependents.* Subject to the availability of space, facilities, and the capabilities of the professional staff and the priorities listed in § 728.3, dependents are authorized the following in naval MTFs:

(1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen, and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

(i) Medical and surgical conditions.

(ii) Contagious diseases.

(iii) Nervous, mental, and emotional disorders.

(iv) Chronic conditions and diseases.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant and well-baby care for those mothers and infants meeting the eligibility requirements of § 728.31(b). The newborn infant of an unmarried dependent minor daughter shall be classed as a civilian humanitarian nonindigent inasmuch as the infant is not a dependent of the active duty or retired service member as defined in § 728.31(b). Therefore, the minor daughter's sponsor (parent) should be counseled concerning the possibility of Secretarial designee status for the infant (see § 728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations. Physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requested by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. The rendering of such services shall be subordinate to and shall not unduly interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. The release of information to non-Navy employed physicians shall be in consonance with applicable provision of SECNAVINST 5211.5C.

(9) Family planning services as delinated in SECNAVINST 6300.2A.

(10) Routine dental care may be provided to beneficiaries residing outside the United States. Within the United States, routine dental care may be provided only at installations which have been authorized, on an individual basis, to provide such care. At these designated installations, routine dental care may be provided only to those dependents who reside in the dentally underserved area (the MHSS catchment area of the facility), or as otherwise determined by the Secretary of the Navy. At installations within the United States not authorized to provide routine dental care, dental care is limited to:

(i) Emergency dental or oral care.

(ii) Dental care, including restorative dentistry and dental prosthetic devices, deemed necessary as an adjunct to medical or surgical treatment of a disease, condition, or injury.

(iii) Preventive measures including the fluoridation of water and the preventive dentistry program.

(iv) Consultation, examination, and diagnosis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government outside the United States and at specific installations within the United States which have been designated by the Secretary of the Navy as remote.

(17) Special lenses (including intraocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) Visa examinations for alien dependents of Armed Forces personnel at overseas locations having one or more medical officers. Normally such examinations will consist of a superficial history and an interview to exclude present mental illness, drug addiction, psychopathic personality, or chronic alcoholism; a rather limited physical examination for overt evidence of venereal disease or leprosy; and a chest x-ray, and serology. Guidelines for examinations and procedures beyond those normally required may be found in the Manual for Examination of Aliens. This manual may be acquired from U.S. officials at American Embassies, Consular Posts, or other U.S. visa issuing offices.

§ 728.33 Application for Care.

Possession of an ID card alone (DD Form 2 (Retired), PHS-1866-3 (Retired), or DD Form 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check shall be instituted in accordance with § 728.4(dd) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of § 728.35 shall apply. When required inpatient care cannot be rendered and the decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of § 728.34 apply.

§ 728.34 Nonavailability Statement (DD Form 1251).

(a) *General.* Pursuant to DOD Instruction 6015.19 of 15 June 1983, the following guidelines are effective as of 15 June 1983. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) *Applicability.* The following provisions are applicable to nonemergency inpatient care only. A DD Form 1251 is not required for either:

(1) Emergency care (see § 728.34(d)(1)); or

(2) When the beneficiary has other insurance paying at least 75 percent of the covered service.

(c) *Reasons for Issuance.* DD Form 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.

(2) Professional capability is not available.

(3) It would be medically inappropriate (as defined in § 728.2(v)) to require the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD Form 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD Form 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(d) *Guidelines for Issuing.* (1) *Emergency Care.* Claims for emergency care do not require a Nonavailability Statement, however, the nature of the service or care must be certified to be an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, CHAMPUS-eligible beneficiaries who are subject to the provisions of § 728.34 require a DD Form 1251.

(2) *Emergency Maternity Care.* Unless substantiated by medical documentation and review, a maternity admission would not be deemed as an emergency since the fact of the pregnancy would have been established well in advance of the admission. In such an instance, the beneficiary would have had sufficient opportunity

to obtain a DD Form 1251 if required in her residence catchment area.

(3) *Newborn Infant(s) Remaining in Hospital After Discharge of Mother.* A newborn infant remaining in the hospital continuously after discharge of the mother does not require a separate DD Form 1251 for the first 15 days after the mother is discharged. Claims for care beyond this 15-day limitation must be accompanied by a valid DD Form 1251 issued in the infant's name. This is due to the fact that the infant becomes a patient in his or her own right (the episode of care for the infant after discharge of the mother is not considered part of the initial reason for admission of the mother (delivery), and is therefore considered a separate admission under a different diagnosis).

(4) *Beneficiary Responsibilities.* Beneficiaries are responsible for determining whether a Nonavailability Statement is required for their area of residence and for obtaining one, if required, by first seeking nonemergency inpatient care in the USMTF serving the catchment area. Beneficiaries cannot avoid this requirement by arranging to be away from their residence when nonemergency inpatient care is obtained, e.g., staying with a relative or traveling. Individuals who require a Nonavailability Statement because they reside in the catchment area of a USMTF also require a Nonavailability Statement for nonemergency care received while away from their catchment area.

(e) *Issuing Authority.* Under the direction of the Commander, Naval Medical Command, exercised through geographic commanders of naval medical commands, naval MTFs shall issue Nonavailability Statements only when care required is not available from the naval MTF and the beneficiary's place of residence is within the catchment area (as defined in § 728.2(d)) of the issuing facility or as otherwise directed by the Secretary of Defense. When the facility's catchment area overlaps the catchment area of one or more other USMTFs with inpatient capability and the residence of the beneficiary is within the catchment area of one of more other USMTFs with inpatient capability, the issuing authority shall:

(1) Determine whether the required care is available at any of the other USMTFs whose catchment area overlaps the beneficiary's residence. Should it be available, the beneficiary shall be referred to that facility for care and a DD Form 1251 shall not be issued.

(2) Implement measures ensuring that an audit trail related to each check and referral is maintained, including the check required before retroactive issuance of a DD Form 1251 as delineated in § 728.34(g). When other than written communication is made to ascertain capability, a record shall be made in the log required in § 728.34(h) that "Telephonic (or other) determination was made on (*date*) that required care was not available at (*name of other USMTF(s) contacted*)". This notation shall be signed by the individual ascertaining this information.

(3) Once established that a DD Form 1251 is authorized and will be issued, the following shall apply:

(i) Patients shall not be referred to a specific source of care.

(ii) Nonavailability Statements issued at commands outside the United States are not valid for care received in facilities located within the United States. Statements issued within the United States are not valid for care received outside the United States.

(iii) The issuing officer shall:

(A) Prepare each DD Form 1251 in accordance with instructions on the reverse of the form. After completion, if authorized by the facility commanding officer, the issuing authority shall sign the DD Form 1251 (four-part set). Three copies shall be furnished the patient: one for the participating civilian provider, or for submission with the claim of a nonparticipating provider; one for the inpatient civilian facility; and one for retention by the sponsor or patient. The remaining copy shall be retained by the issuing facility for reporting in accordance with § 728.34(j).

(B) Explain to the patient or other responsible family member the validity period of the DD Form 1251 (see § 728.34(f)).

(C) Ensure that beneficiaries are clearly advised of the cost-sharing provisions of CHAMPUS and of the fact that the issuance of a Nonavailability Statement does not imply that CHAMPUS will allow any and all costs incurred through the use of the DD Form 1251. The issuance of a DD Form 1251 indicates only that the care requested is not available in the USMTF.

(D) Review, with the patient or responsible family member, instructions 1 through 6 on the face of the DD Form 1251 and have the patient or responsible family member sign acknowledgement that such review has been made and is understood.

(f) *Validity Period.* DD Form 1251's issued for:

(1) Other than maternity care are valid for a hospital admission occurring within 30 days of issuance and remain valid from the date of admission until 15 days after discharge from the facility rendering inpatient care. This allows for any follow-on treatment related directly to the original admission.

(2) Maternity episodes are valid if outpatient or inpatient treatment related to the pregnancy is initiated within 30 days of its issuance. They remain valid for care of the mother through termination of the pregnancy and for 30 days thereafter to allow for postnatal care to be included in the maternity episode.

(g) *Retroactive Issuance.* Nonavailability Statements shall be issued retroactively only if required care could not have been rendered in a USMTF as specified in § 728.34(e) at the time services were rendered in the civilian sector. Accordingly, at the time a retroactive issuance is requested, the facility receiving the request shall determine whether capability existed at the USMTF serving the catchment area wherein the beneficiary resides (resided) or at any of the facilities in the overlapping area described in § 728.34(e).

(h) *Annotating DD Form 1251's.* Before issuance, each DD Form 1251 shall be annotated in accordance with the instructions for completion on the reverse of each DD Form 1251. DD Form 1251's issued under the CO's discretionary authority for the "medically inappropriate" reason (§ 728.4(c)(3)(ii)) shall be annotated in the remarks section documenting the special circumstances necessitating issuance, the name and location of the source of care selected by the beneficiary, and the approximate distance from the source selected to the nearest USMTF with capability. A consecutively numbered log shall be established and maintained to include for each individual to whom a DD Form 1251 is issued:

(1) Patient's name and identifying data.

(2) The facility unique NAS number (item number 1 on the DD Form 1251).

(i) *Appeals Procedures.* Beneficiaries may appeal the denial of their request for a DD Form 1251. This procedure consists of four levels within Navy, any one of which may terminate action and order issuance of a Nonavailability Statement if deemed warranted:

(1) The first level is the chief of service, or director of clinical services if the chief of service is the cognizant authority denying the beneficiary's original request.

(2) The second level is the commanding officer of the naval MTF denying the issuance. Where the appeal is denied and denial is upheld at the commanding officer's level, beneficiaries shall be informed that their appeal may be forwarded to the geographic commander having jurisdictional authority.

(3) The third level is the appropriate geographic commander. If the appeal is denied at this level, beneficiaries shall be informed that their appeal may be forwarded to the Commander, Naval Medical Command, Washington, DC.

(4) The Commander, Naval Medical Command, the fourth level of appeal, will evaluate all documentation submitted and arrive at a decision. The beneficiary will be notified in writing of this decision and the reasons therefor.

(j) *Data Collection and Reporting.* Naval MTFs with inpatient capability shall establish and maintain a system of data collection on the number of DD Form 1251's issued according to reason for issuance, clinical specialty, and the category of beneficiary to whom issued. Report this information to the Commander, Naval Medical Command (MEDCOM-31) quarterly within 15 days after the end of the quarter, commencing with the quarter ending after the date of this instruction. When reporting the number of DD Form 1251's issued for the "medically inappropriate" reason, annotate format to provide the number included in the body of the report that were issued under the provisions of § 728.34(c)(3)(ii). Provide copies to the commander of the geographic region for information and evaluation. Inasmuch as COMNAVMEDCOM (MEDCOM-31) must compile and reconcile statistics from all activities, assure that information is reported only in the proper format. Modified reports received at COMNAVMEDCOM must be rectified causing delays in reporting to higher authority.

§ 728.35 Care Beyond the Capabilities of a Naval MTF.

When, either during initial evaluation or during the course of treatment of an individual authorized care in this subpart, it is determined that required care or services are beyond the capability of the naval MTF, the provisions of § 728.4(aa) apply.

Subpart E—Members of Foreign Military Services and Their Dependents

§ 728.41 General Provisions.

(a) *Dependent.* As used in this subpart, the term "dependent" denotes a person who bears one of the following relationships to his or her sponsor:

(1) A wife.

(2) A husband if dependent on his sponsor for more than one-half of his support.

(3) An unmarried legitimate child, including an adopted or stepchild who is dependent on the sponsor for over one-half of his or her support and who either:

(i) Has not passed the 21st birthday; or

(ii) Is incapable of self-support due to a physical or mental incapacity that existed prior to reaching the age of 21; or

(iii) Has not passed the 23rd birthday and is enrolled in a full-time course of study in an accredited institution of higher learning.

(b) *Transfer to Naval MTFs in the United States.* Personnel covered in this subpart shall not be transferred to the United States solely for the purpose of obtaining medical care at naval MTFs. Consideration may be given however, in special circumstances pursuant to the laws of humanity or principles of international courtesy. Transfer to naval MTFs in the United States of such persons located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, shall not commit the Navy by a promise of treatment in the United States. Approval generally will not be granted for treatment of those who suffer from incurable afflictions, who require excessive nursing or custodial care, or those who have adequate facilities in their own country. When a request is received concerning transfer for treatment at a naval MTF in the United States, the following procedures shall apply:

(1) The request shall be forwarded to the Chief of Naval Operations (OP-61), with a copy to the Commander, Naval Medical Command, Washington, DC for administrative processing and shall include:

(i) Patient's full name and grade or rate (if dependent, the sponsor's name and grade or rate also).

(ii) Country of which a citizen.

(iii) Results of coordination with the chief of the diplomatic mission of the country involved.

(iv) Medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures, and all other pertinent medical information.

(v) Availability or lack thereof of professional skills and adequacy of facilities for treatment in the member's own country.

(vi) Who will assume financial responsibility for costs of hospitalization and travel.

(2) The Chief of Naval Operations (OP-61) will, if appropriate, obtain State Department clearance and guidance and advise the Secretary of the Navy accordingly. The Commander, Naval Medical Command will furnish the Chief of Naval Operations information and recommendations relative to the medical aspects and the name of the naval MTF having the capability to provide the required care. If approved, the Chief of Naval Operations will furnish, through the chain of command, the commanding officer of the designated naval MTF authorization for admission of the beneficiary for treatment.

(c) *Reimbursement.* Pub. L. 96-527 and subsequent appropriation acts contain provisions prohibiting the expenditure of appropriated funds ". . . to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided,* that reimbursements . . . shall be credited to the appropriations against which charges have been made for providing such care." Accordingly, naval MTFs in the 50 United States shall collect full costs (full reimbursement rate (FRR)) for inpatient care provided to all foreign military personnel (not connected with a Foreign Military Sales (FMS) case number), foreign diplomatic personnel, and the dependents of both whether they are in the United States on official duty or for other reasons. (Chapter II, part 4 of NAVMED P-5020 is applicable to the collection of and accounting for such charges.)

§ 728.42 NATO.

(a) *NATO SOFA Nations.* Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(b) *Beneficiaries.* The following personnel are beneficiaries under the conditions set forth, subject to reimbursement for inpatient care by the responsible NATO nation or individual concerned.

(1) *Members of NATO Military Services and Their Dependents.* Military personnel of NATO nations who, in connection with their official duties, are stationed in or passing through the United States, and their dependents residing in the United States with the sponsor may be provided care in naval MTFs to the same extent and under the same conditions as comparable U.S. uniformed services personnel and their dependents. Accordingly, the provisions of § 728.12 are applicable to military personnel and § 728.32(b) to accompanying dependents.

(2) *Military Ships and Aircraft Personnel.* Crew and passengers of visiting military aircraft and crews of ships of NATO nations which land or come into port at NATO or U.S. military airfields or ports within NATO countries.

(3) *NATO Liaison Officers.* In overseas areas, liaison officers from NATO Army Forces or members of a liaison detachment from such a Force.

(c) *Application for Care.* Military personnel of NATO nations stationed in the United States and their dependents shall present valid Uniformed Services Identification and Privilege Cards (DD Form 1173) when applying for care. For other eligible persons passing through the United States on official business and those enumerated in § 728.42(b) (2) and (3), orders or other official identification may be accepted in lieu of the DD Form 1173.

(d) *Disposition.* When it becomes necessary to return individuals to their home country for medical reasons, immediate notification shall be made to the NATO unit sponsoring the member or dependent's sponsor. This notification shall include all pertient information regarding the physical and mental condition of the individual concerned. Below are details of agreements among the Armed Forces of NATO, CENTO, and SEATO Nations on procedures for disposition of allied country patients by DOD medical installations.

(1) *Transfer of Patients.*

(i) The patient's medical welfare must be the paramount consideration. When deciding upon the transfer of a patient, due consideration should be given to any increased medical hazard which the transfer might involve.

(ii) Arrangements for disposition of patients should be capable of being implemented by existing organizations. Consequently, no new establishment should be required specially for dealing with the transferring of allied casualties.

(iii) Patients will be transferred to their own national organization at the earliest practicable opportunity consistent with the observance of principles established in § 728.42(d)(1) (i) and (ii) and under any of the following conditions:

(A) When a medical facility of their own nation is within reasonable proximity of the facility of the holding nation.

(B) When the patient is determined to require hospitalization in excess of 30 days.

(C) Where there is any question as to the ability of the patient to perform duty upon release from the MTF.

(iv) The decision as to whether a patient, other than one requiring transfer under § 728.42(d)(1)(iii), is fit for release from the MTF is the responsibility of the facility's commanding officer.

(v) All clinical documents, to include x-rays, relating to the patient will accompany such patients on transfer to their own national organization.

(vi) The decision of suitability for transfer and the arrangements for transfer will be the responsibility of the holding nation.

(vii) Final transfer channels should be arranged by local liaison before actual movement.

(viii) Patients not suitable for transfer to their own national organization must be dealt with for treatment and disposition purposes as patients of the holding nation until they are transferred, i.e., they will be dealt with in military hospitals, military medical installations, or in civilian hospitals that are part of the military medical evacuation system of the holding nation.

(2) *Classification of Patients.* Different channels for disposition will be required for the following two types of patients:

(i) Patients Not Requiring Admission. Patients not requiring admission to an MTF will be returned to their nearest national unit under arrangements to be made locally.

(ii) Patients Admitted to Medical Installations. All such patients will be dealt with in accordance with § 728.42(d)(1).

(e) *Care Authorized Outside the 48 Contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only, *provided,* the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to authorized inpatient care and shall not include dental prostheses or orthodontia.

§ 728.43 Members of Other Foreign Military Services and Their Dependents.

(a) *Foreign Military Service Members.* For the purpose of § 728.43, members of foreign military services include only:

(1) Military personnel who are carried on the current Diplomatic List (Blue) or on the List of Employees of Diplomatic Missions (White) published by the Department of State.

(2) Military personnel assigned or attached to United States military units for duty; military personnel on foreign military supply missions accredited to and recognized by one of the military departments; and military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. For the purpose of § 728.43, members of foreign Security Assistance Training Programs (SATP) and Foreign Military Sales (FMS) are not included (see § 728.44).

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the

Secretary of State, Secretary of Defense, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments exclusive of NATO nations.

(b) *Care Authorized in the United States.* Subject to reimbursement for inpatient care as outlined in § 728.41(c), military personnel of foreign nations not covered in § 728.42 and their dependents residing in the United States with the sponsor may be provided medical care in naval MTFs to the same extent and under the same conditions as comparable personnel of the U.S. uniformed services and their dependents, *provided,* the sponsor is in the United States in a status officially recognized by an agency of the Department of Defense. Hospitalization generally will not be granted to members or dependents who require prolonged treatment for chronic conditions, nervous or mental disorders, or domiciliary care, except in an emergency to preserve life or prevent suffering. Dental care is limited to emergencies only.

(c) *Application for Care.* All personnel covered by § 728.43 shall present orders or other official U.S. identification verifying their status when applying for care.

(d) *Disposition.* When it becomes necessary to return individuals covered by § 728.43 to their home country for medical reasons, immediate notification shall be made to the sponsoring unit of the patient or patient's sponsor with a copy to the Chief of Naval Operations (OP-61). Such notification shall include all pertinent information regarding the physical and mental condition of the individual concerned and full identification, diagnosis, prognosis, estimated period of hospitalization, and recommended disposition. Additionally, the provisions of § 728.42(d) (1) and (2) above apply.

(e) *Care Authorized Outside the 48 Contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only, *provided,* the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to authorized inpatient care and shall not include dental prostheses or orthodontia.

§ 728.44 Members of Security Assistance Training Programs, Foreign Military Sales, and Their ITO Authorized Dependents.

(a) *Policies.* (1) *Invitational Travel Orders Screening.* Prior to determining the levels of care authorized or the government or person responsible for payment for care rendered, ITOs should be carefully screened to detect variations applicable to certain foreign countries. For example, Kuwait has a civilian health plan to cover medical expenses of their trainees; trainees from the Federal Republic of Germany are personally responsible for reimbursing for inpatient care provided to their dependents; and all inpatient medical services for trainees from France and their dependents are to be borne by the individual trainee.

(2) *Elective and Definitive Surgery.* The overall policy with respect to elective and definitive surgery for Security Assistance Training Program (SATP), Foreign Military Sales (FMS) personnel and their dependents is that conservatism shall at all times prevail, except bona fide emergency situations which might threaten the life or health of an individual. Generally, elective care is not authorized nor should be commenced. However, when a commanding officer of a naval MTF considers such care necessary to the early resumption and completion of training, the complete facts shall be submitted to the Chief of Naval Operations (OP-63) for approval. Such a submission shall include the patient's name (sponsor's also if patient is an ITO (Invitational Travel Orders) authorized dependent), grade or rate, country of origin, diagnosis, type of elective care being sought, and prognosis.

(3) *Prior to Entering Training.* Upon arrival of an SATP or FMS trainee in the United States or at an overseas training site, it is discovered that the trainee cannot qualify for training by reason of a physical or mental condition which will require a significant amount of treatment before entering or completing training, such trainees shall be returned to their home country immediately or as soon thereafter as travel permits.

(4) *After Entering Training.* When trainees require hospitalization or are disabled after entering a source of training, they shall be returned to their home country as soon as practicable when, in the opinion of the commanding officer of the medical facility, hospitalization or disability will prevent training for a period in excess of 30 days. A copy of the patient's clinical records shall be forwarded with the patient. When a trainee is accepted for treatment that is not expected to exceed 30 days, the commanding officer of the training activity will be so notified. Further, when a trainee is scheduled for consecutive training sessions convening prior to the expected date of release from a naval MTF, the next scheduled training activity shall be made an information addressee. Upon release from the MTF, the trainee shall be directed to resume training.

(b) *Care Authorized.* Generally, all SATP and FMS personnel and their ITO authorized dependents are entitled to care to the same extent. However, certain agreements require that they be charged differently and that certain exclusions apply.

(1) *NATO Members and Their ITO Authorized Dependents.*

(i) *Foreign Military Sales (FMS).* Subject to reimbursement in accordance with § 728.41(c), FMS personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and their accompanying ITO authorized dependents shall be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International Military Education and Training (IMET).* Subject to reimbursement for inpatient care at the appropriate IMET rate for members or at the full reimbursement rate for dependents, IMET personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and accompanying dependents shall be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their accompanying dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependent are not authorized cooperative care under CHAMPUS.

(2) *Other Foreign Members and ITO Authorized Dependents.*

(i) *Foreign Military Sales.* Subject to reimbursement for both inpatient and outpatient care at the full reimbursement rate, FMS personnel of non-NATO nations and ITO authorized accompanying dependents may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for the military member and is not authorized for dependents.

(D) Outpatient care is chargeable on a full reimbursable basis from either foreign military trainees or from their government.

(E) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International Military Education and Training.* Subject to reimbursement for both inpatient and outpatient care at the appropriate rates for members and dependents, IMET personnel of non-NATO nations may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for military members and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(c) *Application for Care.* Trainees and accompanying dependents shall present official U.S. identification or orders verifying their status when applying for care. If any doubt exists as to the extent of care authorized, ITOs should be screened (see § 728.44(a)(1)).

(d) *Notification.* When trainees require hospitalization as a result of illness or injury prior to or after entering training, the training activity (the hospital if patient has been admitted) shall make a message report through the normal chain of command to the Chief of Naval Operations (OP-63) with information copies to MAAG, COMNAVMEDCOM, Navy International Logistics Control Office (NAVILCO), Unified Commander, the affected office, and the foreign naval attache concerned. The report shall include details of the incident, estimated period of hospitalization, physical or mental condition of the patient, and diagnosis. For further amplification, see OPNAVINST 4950.1G and NAVCOMPTMAN 032103. (Report Control Symbol OPNAV 3100-11 applies.)

§ 728.45 Civilian Components (Employees of Foreign Military Services) and Their Dependents.

(a) *Care Authorized.* Beneficiaries covered in § 728.45 are only authorized care in naval MTFs in the United States and then only civilian humanitarian emergency care rendered at installations which have been designated as remote by the Secretary of the Navy. Arrangements will be made to transfer such beneficiaries to a civilian facility as soon as their condition permits.

(b) *Potential Beneficiaries.* (1) *NATO.* Civilian employee personnel (and their dependents residing with them) accompanying military personnel in § 728.42(b)(1), *provided,* the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(2) *Others.* Civilian personnel not covered in § 728.45(b)(1) (and their dependents residing with them) accompanying personnel of foreign nations on duty in the United States at the invitation of the Department of Defense or one of the military departments.

(c) *Application for Care.* Personnel covered by the provisions of § 728.45 shall present orders or other official U.S. identification verifying their status when applying for care.

Subpart F—Beneficiaries of Other Federal Agencies

§ 728.51 General Provisions—the "Economy Act."

Under the provisions of 31 U.S.C. 686, any executive department or independent establishment of the Government, or any bureau thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the best interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for services of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render. This is commonly known as the "Economy Act." Unless otherwise stipulated in this subpart F, the provisions of § 728.51 shall apply when other Federal agencies request medical or dental care for beneficiaries for whom they are responsible, including occupational health services as defined in § 728.2(aa).

§ 728.52 Veterans Administration Beneficiaries (VAB).

(a) *Eligible Beneficiaries.* Those who have served in the Armed Forces, have been separated under conditions other than dishonorable, and have been determined by the Veterans Administration (VA) to be eligible for care at VA expense.

(b) *Inpatient Control.* Each VAB admitted shall be required to conform to regulations governing the internal administration of the naval facility. Restrictive or punitive measures, including disciplinary action or denial of privileges, shall conform as nearly as possible to VA instructions.

(c) *Resolution of Problems.* All problems pertaining to VABs, including admission, medical or other records, and all correspondence shall be matters of resolution between the commanding officer of the naval facility and the VA office of jurisdiction authorizing admission. Questions of policy and administration which cannot be so resolved shall be forwarded, through the normal chain of command, to the Administrator of Veterans Affairs via COMNAVMEDCOM for resolution.

(d) *Care in the United States.* (1) *Inpatient Care.* An eligible VAB may be admitted to a naval MTF on presentation of a written authorization for admission signed by an official of the VA office of jurisdiction. Neurological and certain neuropsychiatric patients without obvious evidence of psychosis and not requiring restraints, and instances of suspected tuberculosis may be admitted for diagnosis. When diagnosed, instances of psychosis, psychoneurosis, and tuberculosis of present clinical significance shall be reported promptly to the VA office of jurisdiction with a request for transfer to a VA facility.

(i) Extent of Care. Eligible VABs shall be furnished medical and surgical care, including prostheses such as eyes and limbs, and appliances such as hearing aids, spectacles, or orthopedic appliances when required for the proper treatment of the condition upon which eligibility is based.

(ii) Disposition of Emergency Admissions. Commanding officers of naval MTFs shall notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the date and hour of an emergency admission of a potential VAB. This notification shall contain a request for an authorization for admission and emergency treatment. If VA denies VAB status to such a person admitted in an emergency, the provisions of § 728.81(a) are applicable. Once admitted in an emergency situation, a VAB shall be discharged promptly upon termination of the emergency unless arrangements have been made with the VA office of jurisdiction:

(A) For transfer to a VA treatment facility if further treatment is required.

(B) To retain the patient as a VAB in the naval MTF.

(2) *Outpatient Care.* Outpatient care, including post hospitalization outpatient care, may be provided upon authorization by the VA office of jurisdiction. When outpatient followup care is requested, commanding officers are responsible for determining whether capabilities and workload permit providing such care. In an emergency, necessary care shall be provided.

(3) *Physical Examinations.* Upon a determination by a naval MTF commanding officer that space, facilities, and capabilities exist, naval MTFs may provide physical examinations when requested by the VA for the purpose of adjudicating claims for VA physical disability compensation. If authorized by the VA, patients may be admitted when the examination requires more than one day.

(4) *Dental Care.* Dental treatment shall be limited to inpatients who require services adjunctive to medical or surgical conditions for which hospitalized.

(e) *Care Outside the United States.* (1) *Eligible Beneficiaries.* Beneficiaries described in § 728.52(a) who are citizens of the United States and residing or sojourning abroad may, within the capabilities of the facility as determined by the commanding officer, be provided inpatient and outpatient care upon presentation of an authorization from the appropriate VA office of jurisdiction listed in § 728.52(e)(3).

(2) *Emergency Care.* Overseas naval MTFs furnishing emergency care to potential VABs shall promptly notify the appropriate VA office of jurisdiction and request authorization for treatment and instructions for disposition of the patient.

(3) *Offices of Jurisdiction.* The following activities are vested with the responsibility for issuing authorizations for care and furnishing disposition instructions for VABs in overseas naval MTFs:

(i) In the Trust Territory of the Pacific (Micronesia), VA Office, Honolulu, Hawaii.

(ii) In the Philippines, VA Regional Office, Manila, Philippines.

(iii) In Canada, Canadian Department of Veterans Affairs, Ottawa, Canada.

(iv) In all other foreign countries, consular offices of U.S. embassies.

(f) *Forms Required.* (1) VA Form 10-10 (Application for Medical Benefits) will be completed for those potential VABs admitted for emergency care without prior authorization.

(2) VA Form 10-10m (Medical Certificate and History) will be prepared by naval MTFs when care is rendered. All information required in the medical certificate thereon will be furnished whether the admission is subsequently approved or disapproved by the VA office of jurisdiction.

(3) Since the completion of VA Form 10-10m requires an examination of patients, admissions which are disapproved shall be reported as medical examinations on DD Form 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (Part B).

(4) DD Form 7, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (Part A) will be prepared and submitted on all VABs and potential VABs admitted.

(5) Standard Form 502 (Narrative Summary) or Standard Form 539 (Abbreviated Clinical Record), as appropriate, will be completed when a VAB or potential VAB is discharged or otherwise released. When an interim report of hospitalization is requested by the VA office of jurisdiction, it may be prepared on Standard Form 502.

§ 728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) Beneficiaries.

(a) *Potential Beneficiaries.* The following may be beneficiaries of one of the programs sponsored by the Office of Workers' Compensation Programs (OWCP) under the conditions set forth. They are not beneficiaries of OWCP until authorized as such by the appropriate district office of OWCP. However, they may be carried as potential beneficiaries pending OWCP determination of eligibility. DOD civilian employees provided medical services under a Defense or service health program are not included under this authority (see subpart G).

(1) Members and applicants for membership in the Reserve Officers' Training Corps of the Navy, Army, and Air Force, provided the condition necessitating treatment was incurred in line of duty and the care rendered is solely after termination of duty for injury (a disease or illness which is the proximate result of performance of training is considered an injury) incurred while engaged in:

(i) Training.

(ii) Flight instructions.

(iii) Travel to or from training or flight instructions.

(2) The following employees of the Government of the United States, regardless of nationality or place of work, are entitled to receive care as outlined in § 728.53(e) for work incurred injuries, at the expense of OWCP. (In addition to injury by accident, a disease or illness which is the proximate result of performance of employment duties is considered an injury. OWCP payment for treatment of a nontraumatic injury or a disease depends upon favorable adjudication of the case by OWCP even though the individual presents with a CA-16 signed by the individual's supervisor.) This category includes but is not limited to:

(i) Civilian student employees in training at Navy and Marine Corps facilities.

(ii) Civilian seamen in the service of vessels operated by the Department of the Army (see § 728.53(a)(7) and § 728.80(c)(2) for civilian Military Sealift Command (MSC) personnel).

(iii) All civilian employees of the Government except nonappropriated-fund-activity employees.

(3) Civilian members of the Civil Air Patrol (except Civil Air Patrol Cadets) for injury or disease which is the proximate result of active service or travel

to and from such service, rendered in performance or support of operational missions of the Civil Air Patrol under the direction and written authority of the Air Force.

(4) Former Peace Corps enrollees for injury or disease which is the proximate result of their former employment with the Peace Corps or which was sustained or contracted while located with the Peace Corps outside the United States and its territories.

(5) Former Job Corps enrollees for injury or disease which is the proximate result of employment with the Job Corps.

(6) Former VISTA (Volunteers in Service to America) enrollees for injury or disease which is the proximate result of employment with VISTA.

(7) Military Sealift Command (MSC) civilian marine personnel (CIVMARPERS or CIVMARS) (including temporary employees, intermittent employees, and employees with less than 1 year's service) are entitled to occupationally related care at the expense of OWCP. CIVMARS are in a crew status only after reporting to their assigned ship. They are in a travel status from crewing point to ship and return. While in a travel status, they are entitled to the same health care benefits as other Federal civil service employees in a travel status (5 U.S.C. 8101). CIVMARS presenting for treatment with a properly completed CA-16, Request for Examination and/or Treatment, shall:

(i) Enter the naval MTF's system through the occupational medicine service.

(ii) Be treated for any injury or disease proximately caused by their employment. Although the actual determination of whether an illness or injury is occupationally related is a function of OWCP, determinations are based on the injury report required in each instance along with the treatment record from the attending physician. Therefore, when doubt exists as to the relationship of the condition to the potential patient's employment, the physician should report an unbiased medical conclusion and the medical rationale therefor, indicating the conditions which are responsible for the claimant's disability. As a general rule, the following may be initially considered as occupationally related, however, it should be emphasized that OWCP is the final approval authority:

(A) Any injury or illness occurring as a direct result of employment. May occur on a ship, at a Government installation ashore, or in an aircraft while performing a requirement of employment.

(B) Any injury or illness which becomes manifest while away from work (on leave or liberty) while in a crew status or travel status as long as the condition may be directly related to job activities or to exposures incident to travel to ship assignment.

(c) Required immunizations.

(D) Required physical examinations.

(E) Periodic medical surveillance screening examinations for DOD occupational and industrial health programs, i.e., asbestos medical surveillance, hearing conservation, etc.

(iii) Be referred to a non-Federal source of care where back-to-work care may be provided at the CIVMAR's expense after, if necessary, the immediate emergency is alleviated when a reasonable determination can be made that injury or illness is not occupationally related.

(A) Pursuant to 5 U.S.C. 7901(c)(3), the health service program for Federal civilian employees is limited to referral of employees, upon their request, to private sources of care.

(B) Long term extended care of chronic illnesses such as hypertension, diabetes, etc., is not authorized in naval MTFs at the expense of OWCP nor at the CIVMAR's personal expense.

(C) Patients who cannot be referred, because of medical reasons or because non-Federal sources are not available or available but inadequate, may be retained in naval MTFs at the expense of the CIVMAR or of his or her private insurance until transfer becomes possible. Although the means of access to the naval MTF may have been through the occupational medicine service, retention in the naval MTF is on a civilian humanitarian basis. This is also applicable when OWCP disallows a CIVMAR's claim (see § 728.53(c) below).

(b) *Authorization Required.* Personnel in § 728.53(a) (1) through (6) may be rendered inpatient and outpatient care as outlined in § 728.53(e), unless otherwise stipulated in § 728.53, upon presentation of a properly prepared and signed Authorization Form CA-16 (Request for Examination and/or Treatment). If the condition for which treatment is requested appears related to employment, treatment of beneficiaries in § 728.53(a) (1) through (7) may be initiated without said authorization. Patients provided treatment without Form CA-16 may be carried as OWCP beneficiaries from the time of initial treatment, provided the appropriate district office of OWCP is notified and requested to submit Form CA-16 within 48 hours giving authorization as of the date of actual treatment. OWCP will not be liable for the payment of bills for unauthorized treatment. Post hospitalization care following authorized inpatient care does not require an additional authorization. First aid treatment rendered civilian employees does not require an authorization form.

(c) *Disallowance by OWCP.* When OWCP determines that any claim should be disallowed, OWCP will advise the naval facility rendering care that no further treatment shall be rendered at OWCP expense. The patient ceases to be an OWCP beneficiary as of the date of receipt of the notice of disallowance by the naval MTF and the patient shall be so notified. Any treatment subsequent to the date of receipt of the notice of disallowance shall be at the personal expense of the patient (see § 728.81(a)).

(d) *Authorization for Transfer.* Prior approval of OWCP is required before a transfer can be effected, except in an emergency or when immediate treatment is deemed more appropriate in another Federal facility. When transfer is effected without approval, the transferring facility shall immediately request such authorization from the appropriate district office of OWCP. When authorized by OWCP, evacuation to the United States shall be effected in accordance with OPNAVINST 4630.25B. Medical records and Form CA-16 will accompany such patients.

(e) *Care Authorized.* (1) *Inpatient Care.* Medical and surgical care necessary for the proper treatment of the condition upon which eligibility is based. Specific OWCP authorization is required before major surgical procedures can be performed unless the urgency of the situation is such that time does not permit obtaining said authorization. All necessary prostheses, hearing aids, spectacles, and orthopedic appliances shall be furnished when required for proper treatment of the condition upon which eligibility is based. Damaged or destroyed medical braces, artificial limbs, and other prosthetic devices shall be replaced or repaired, except that eyeglasses and hearing aids shall not be replaced or repaired unless their damage or destruction is incidental to a personal injury requiring medical services.

(2) *Outpatient Care.* Complete medical and surgical care not requiring hospitalization, and posthospitalization services following authorized inpatient care in a naval MTF for the proper treatment of the condition upon which eligibility is based.

(3) *Dental Care.* Dental treatment shall be limited to emergencies and that necessary as an adjunct to inpatient hospital care. Such care shall not include dental prostheses or orthodontic treatment.

(f) *Reports and Records.* (1) Copies of medical records will accompany OWCP patients being transferred from one medical treatment facility to another. Records accompanying OWCP patients to a debarkation hospital will be the same as for military personnel and will clearly identify the patient as an OWCP beneficiary.

(2) Form CA-20 (Attending Physician's Report) shall be forwarded to the appropriate district office of OWCP on discharge of the patient unless hospitalization exceeds 1 month. In such instances, a report shall be submitted every 30 days. When extensive hospitalization is required, use SF 502 or a narrative format in lieu of CA-20. When submitted to OWCP, the physician's report shall include:

(i) History.

(ii) Physical findings.

(iii) Laboratory findings.

(iv) Abstract of hospital records.

(v) Diagnosis for conditions due to injury and not due to injury.

(vi) Rationalized medical opinion for the physician's belief that the illness or disease treated was causally related to a specific condition or set of conditions to which the claimant was subjected.

(vii) Condition on discharge with opinion as to degree of impairment due to injury, if any.

§ 728.54 U.S. Public Health Service (USPHS), Other Than Members of the Uniformed Services.

(a) *Potential Beneficiaries.* The following may be beneficiaries of the USPHS for care in naval MTFs upon submission of the necessary form from appropriate officials as outlined in § 728.54(b).

(1) Within and Outside the United States. Any individuals the USPHS may determine to be eligible for care on an interagency reimbursable basis.

(2) Within the 48 Contiguous United States and the District of Columbia. American Indians, Alaskan Natives, Eskimos, and Aleuts.

(3) In Alaska. American Indians, Eskimos, and Aleuts.

(b) *Authorization Required.* (1) *Normal Circumstances.* An American Indian or Alaskan Native may be rendered inpatient care upon presentation of HRSA Form 43 (Contract Health Service Purchase Order for Hospital Services Rendered) or HRSA Form 64 (Purchase/Delivery Order for Contract Health Services Other Than Hospital Inpatient or Dental). Either form must be signed by an appropriate Indian Health Service or Alaska Native Health Service area official.

(2) *Emergencies.* In an emergency, care may be rendered upon written request of patient's commanding officer or superior officer, or the patient if neither of the above is available. When emergency care is rendered without prior authorization, the facility rendering care must notify the service unit director of the patient's home reservation within 72 hours from the time such care is rendered unless extenuating circumstances preclude prompt notification.

(c) *Care Authorized.* Unless limited by the provisions stipulated in § 728.54(a) and subject to the provisions of § 728.3, the following care may be rendered, when requested, to all beneficiaries enumerated in § 728.54(a).

(1) *Inpatient Care.* Necessary medical and surgical care.

(2) *Outpatient Care.* Necessary medical and surgical care.

(3) *Dental Care.*

(i) Dental care in the United States, its territories, possessions, and the Commonwealth of Puerto Rico is limited to emergencies for the relief of pain or acute conditions and that necessary as an adjunct to inpatient hospital care. Prosthetic dental appliances and permanent restorations are not authorized.

(ii) In overseas areas, dental care is authorized to the extent necessary pending the patient's return to the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

§ 728.55 Department of Justice Beneficiaries.

Upon presentation of a letter of authorization that includes disposition of SF 88 (Report of Medical Examination), SF 93 (Report of Medical History), and address for submission of claim, the following personnel may be furnished requested care as beneficiaries of the Department of Justice.

(a) *Federal Bureau of Investigation.* Investigative employees of the Federal Bureau of Investigation (FBI) and applicants for employment as special agents with the FBI may be provided:

(1) Immunizations.

(2) Physical examinations and hospitalization when required to determine physical fitness. This period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying defects.

(b) *U.S. Marshals.* U.S. Marshals may receive physical examinations and hospitalization when required to determine physical fitness. This period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying defects.

(c) *Claimants Against the United States.* Claimants whose suits or claims against the United States are being defended by the Department of Justice may be furnished physical examinations to determine the extent and nature of the injuries or disabilities being claimed. Hospitalization is authorized for proper conduct of the examination. Upon completion, the report of the examination shall be furnished promptly to the U.S. Attorney involved.

§ 728.56 Treasury Department Beneficiaries.

(a) *Potential Beneficiaries.* The following may be beneficiaries of the Treasury Department and may be rendered care as set forth below.

(1) Secret Service Special Agents.

(2) Secret Service Agents providing protection to certain individuals.

(3) Persons being provided protection by the Secret Service.

(4) Agents of the U.S. Customs Service.

(5) Prisoners (detainees) of the U.S. Customs Service.

(b) *Care Authorized.* (1) Secret Service Special Agents may be provided routine annual physical examinations upon request and presentation of a letter of authorization. Such examinations shall be conducted and recorded in the same manner as routine examinations rendered naval officers except that they shall be conducted on an outpatient basis only. If hospitalization is considered desirable in connection with the examination, a statement to that effect will be entered in item 73 or 75 of the SF 88, as appropriate, before forwarding to the Director, United States Secret Service.

(2) Secret Service Agents providing protection to certain individuals and those persons being provided such protection shall be rendered all required medical services including hospitalization subject to the provisions of § 728.3.

(3) Agents of the U.S. Customs Service and their prisoners (detainees) may be provided emergency medical treatment and evacuation services to the nearest medical facility (military or civilian) in those remote areas of the United States where no other such services are available. Evacuation will be limited to the continental United States and borders will not be crossed. The Navy's responsibility for medical care of such prisoners terminates once the medical emergency has been resolved. The guarding of prisoners, while they or their captors are receiving treatment at naval MTFs, remains the responsibility of the U.S. Customs Service or other appropriate Federal (nonmilitary) law enforcement agencies.

(c) *Reports and Records.* When examinations are rendered to Secret Service Special Agents, one copy of the SF 88 and one copy of the SF 93 shall be forwarded to the Director, United States Secret Service, Personnel Division, Employee Relations Branch, 1800 G Street, NW., Room 941, Washington, DC 20223 or as otherwise directed by the letter of authorization. An information copy shall be provided to the Deputy Comptroller of the Navy.

§ 728.57 Department of State and Associated Agencies.

Eligibility for care under the provisions of § 728.57 shall be determined by the Department of State, Office of Medical Services.

(a) *Beneficiaries.* Officers and employees of the following agencies, their dependents, and applicants for appointment to such agencies are authorized inpatient and outpatient medical care as set forth below in addition to that care that may be authorized elsewhere within this instruction (i.e., §§ 728.53, 728.55, 728.56, and 728.58). Dental care shall be limited to that delineated in § 728.57(b)(6).

(1) Department of State—U.S. Arms Control and Disarmament Agency and the Office of International Conferences.

(2) U.S. Agency for International Development.

(3) International Communications Agency.

(4) ACTION—Peace Corps Staff.

(5) Department of Agriculture—Foreign Agriculture Service.

(6) Department of Commerce—Bureau of Public Roads.

(7) Department of Interior—Bureau of Reclamation and the U.S. Geological Survey.

(8) Department of Transportation—Federal Aviation Administration and the Federal Highway Administration.

(9) Department of Justice—Drug Enforcement Agency.

(10) Department of Treasury—U.S. Customs, U.S. Secret Service, Office of International Affairs (OIA), U.S.-Saudi Arabian Joint Commission for Economic Cooperation (JECOR), and the Internal Revenue Service.

(11) National Aeronautics and Space Administration.

(12) Library of Congress.

(13) Beneficiaries of such other agencies as may be included in the Department of State Medical Program.

(b) *Care Authorized.* (1) *General.* Care delineated below is authorized by the Foreign Service Act of 1946, as amended. Subject to the restrictions and priorities of § 728.3 and the restrictions of § 728.57, care may be rendered at naval MTFs at the expense of the Department of State or one of the agencies listed in § 728.57(a). The law allows for payment when care is furnished for an illness or injury which results in hospitalization or equal treatment. Outpatient care is only authorized as an adjunct to hospitalization.

(2) *Overseas.*

(i) When, in the opinion of the principal or administrative officer of an overseas post of the Department of State, an individual meets the conditions of eligibility, the post will furnish authorization to the naval MTF for care at the expense of the Department of State or one of the agencies listed above.

(ii) Should the Department of State official determine that the illness or injury does not meet the conditions of eligibility for care at the expense of one of the agencies, all care provided shall be at the expense of the patient or patient's sponsor and charged at the full reimbursement rate.

(3) *In the United States.*

(i) Care is not authorized for an injury or illness incurred in the United States. Authorizations and other arrangements for care in the United States for individuals incurring injury or illness outside the United States will be provided by the Deputy Assistant Secretary for Medical Services, Department of State, using appropriate authorization form(s). When personnel are admitted in an emergency without prior authorization, the commanding officer of the admitting naval MTF shall immediately request authorization from the Deputy Assistant Secretary for Medical Services.

(ii) The extent of care furnished in the United States, to individuals above who are evacuated to the United States for medical reasons, will be comparable in all respects to that which is authorized or prescribed for these individuals outside the United States. When determined appropriate by the Deputy Assistant Secretary for Medical Services, officers and employees and their accompanying dependents who have returned to the United States for nonmedical reasons may be furnished medical care at the expense of one of the above agencies for treatment of an illness or injury incurred while outside the United States.

(4) *Physical Examinations.* The Secretary of State is authorized to provide for comprehensive physical examinations, including dental examinations and other specific testing, of applicants for employment and for officers and employees of the Foreign Service who are U.S. citizens and for their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. An authorization will be executed by an appropriate Department of State official and furnished in duplicate to the naval MTF, listing the type of examination required and stating that the individual is entitled to services at the expense of the Department of State. Reports shall be furnished in accordance with the letter of authorization.

(5) *Immunizations.* Inoculations and vaccinations are authorized for officers, employees, and their dependents upon written authorization from an appropriate Department of State official. This authorization, in duplicate, will include the type of inoculation or vaccination required and shall state that the individual is entitled to services at the expense of the Department

of State. Reports shall be furnished in accordance with the letter of authorization.

(6) *Dental Care.* Dental care at the expense of the Department of State is limited to emergency care for the relief of pain or acute conditions, or for dental conditions as an adjunct to inpatient care. Such care will not include the provision of prosthetic dental appliances.

(c) *Evacuation to the United States.* Should a beneficiary in an overseas naval MTF require prolonged hospitalization, the commanding officer of the overseas facility shall report the requirement to the nearest Department of State principal or administrative officer and request authority to return the patient to the United States. Dependents in such instances who decline evacuation shall be released to the custody of their sponsor. Aeromedical evacuation may be used in accordance with OPNAVINST 4630.25B. Travel of an attendant or attendants is authorized at Department of State expense when the patient is too ill or too young to travel unattended.

§ 728.58 Federal Aviation Administration (FAA) Beneficiaries.

(a) *Beneficiaries.* Air Traffic Control Specialists (ATCS) of the FAA when appropriate authorization has been furnished by the FAA regional representative.

(b) *Authorization.* Written authorization from an FAA Regional Flight Surgeon is required and it shall include instructions for forwarding the results of services rendered.

(c) *Care Authorized.* Subject to the provisions of § 728.3, authorized personnel shall be rendered chest x-rays, electrocardiograms, basic blood chemistries, and audiograms, without interpretation in support of the medical surveillance program for ATCS personnel established by the FAA.

§ 728.59 Peace Corps Beneficiaries.

(a) *Potential Beneficiaries.*

(1) Applicants for the Peace Corps.

(2) Peace Corps Volunteers.

(3) Applicants for the Peace Corps.

(2) Minor children of a Peace Corps volunteer living with the volunteer.

(b) *Care Authorized in the United States.* Upon written request of a Peace Corps official, stating care to be provided and disposition of reports, the following may be provided subject to the provisions of § 728.3.

(1) *Physical Examinations.* Pursuant to BUMEDINST 6120.17B, physical examinations are authorized on an outpatient basis only. Except as outlined in BUMEDINST 6120.17B, no assessment will be made of the physical qualifications of examinees.

(i) Preselection physical examinations may be provided applicants (volunteers) for the Peace Corps.

(ii) Separation or other special physical examinations may be provided volunteers and their dependents as listed in § 728.59(a)(3).

(2) *Immunizations.* Immunizations, as requested, may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical Care.* Both inpatient and outpatient care may be provided volunteers for illnesses or injuries occurring during their period of service which includes all periods of training. Dependents of volunteers specified in § 728.59(a)(3) are authorized care to the same extents as their sponsor.

(4) *Dental Care.* Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. All beneficiaries seeking dental care shall be requested, whenever possible, to furnish advanced authorization for such care.

(c) *Care Authorized Outside the United States.* (1) *Physical Examinations.* Termination physical examinations may be provided volunteers and eligible dependents of volunteers. In most instance, these examinations will be provided by Peace Corps staff physicians; however, assistance may be required of naval MTFs for ancillary services (see BUMEDINST 6120.17B).

(2) *Immunizations.* When requested, immunizations may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical Care.* When requested in writing by a representative or physician of a Peace Corps foreign service post, volunteers, eligible dependents of volunteers, and trainees of the Peace Corps may be provided necessary medical care at Peace Corps expense.

When emergency treatment is rendered without prior approval, a request shall be forwarded to the Peace Corps foreign service post as soon as possible.

(4) *Dental Care.* Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. Beneficiaries seeking dental care shall be requested, whenever possible, to furnish advanced authorization for such care.

(5) *Evacuation to the United States.* When a beneficiary in an overseas naval MTF requires prolonged hospitalization, the commanding officer of the overseas facility shall report the requirement to the nearest Peace Corps foreign service post and request authorization to return the patient to the United States. Dependents in such instances who decline evacuation shall be released to the custody of their sponsor. Aeromedical evacuation may be utilized in accordance with OPNAVINST 4630.25B. Travel of attendant(s) is authorized when the patient is too ill or too young to travel unattended. (Symbol OPNAV 4630-1 applies.)

§ 728.60 Job Corps and Volunteers in Service to America (VISTA) Beneficiaries.

(a) *Beneficiaries.* Job Corps and VISTA enrollees and applicants may be provided services as set forth. For former members, see § 728.53.

(b) *Authorization Required.* (1) Job Corps Enrollees. Presentation of a Job Corps Identification Card after appointment has been made by the corpsmember's Job Corps center.

(2) Job Corps Applicants. Presentation of a letter from a screening agency (e.g., State Employment Service) after an appointment has been made by that agency.

(3) VISTA Volunteers and VISTA Trainees. A valid "Blue-Cross and Blue Shield Indentification Card" is issued to such personnel as identification. Each card has a VISTA identification number which shall be used on all records and correspondence.

(c) *Care Authorized.* Normally, medical services are provided only when civilian or VA facilities are not available, or if available, are incapable of providing needed services. However, upon presentation of appropriate authorization, the following services may be rendered subject to the provisions of § 728.3.

(1) Job Corps enrollees are authorized emergency medical care upon presentation of their Job Corps Identification Card, however, the corpsmember's Job Corps center should be notified immediately.

(2) Job Corps applicants may be provided preenrollment physical examinations and immunizations on an outpatient basis only.

(3) Job Corps enrollees, VISTA trainees, and VISTA volunteers are authorized:

(i) Outpatient medical examinations, outpatient treatment, and immunizations.

(ii) Inpatient care for medical and surgical conditions which, in the opinion of the attending physician, will benefit from definitive care within a reasonable period of time. When it is found probable that a patient will require hospitalization in excess of 45 days, the Commander, Naval Medical Command (MEDCOM-33) shall be notified by the most expeditious means.

(iii) Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. Beneficiaries seeking dental care shall be requested to furnish, whenever possible, advanced authorization for such care.

§ 728.61 Medicare Beneficiaries.

(a) *Care Authorized.* Hospitalization is authorized for beneficiaries who reside in the 50 United States and the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Such hospitalization shall be rendered when emergency services are necessary to prevent death or serious impairment to the health of the individual and which, because of the threat to life or health, necessitates the use of the most accessible hospital that is equipped to furnish such services. Such care is authorized beneficiaries of the Social Security Health Insurance Program for the Aged and Disabled (Medicare).

(b) *General Provisions.* (1) *Limitations.* Benefit payments for emergency services under Medicare can be made for only that period of time during which the emergency exists. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, the patient should be discharged or transferred to a facility that participates in Medicare.

(2) *Notification.* The nearest office of the Social Security Administration shall be notified as soon as possible when a Medicare beneficiary is rendered treatment.

Subpart G—Other Persons

§ 728.71 Ex-Service Maternity Care.

(a) *Eligible Beneficiaries.* Former women members of the Armed Forces who have been separated from active duty under honorable conditions because of pregnancy, or separated from the service under honorable conditions for reasons other than pregnancy and found to have been pregnant at the time of separation, and their newborn infant(s) may be provided care as set forth in § 728.71, subject to the provisions of § 728.3. When certified by medical authorities that the pregnancy existed prior to entry into service (EPTE), maternity benefits are not authorized.

(b) *Care Authorized.* (1) Former women members shall be rendered medical and surgical care in naval MTFs incident to that pregnancy, prenatal care, hospitalization, postnatal care, and, when requirements of SECNAVINST 6300.2A are met, abortions. Postnatal care is limited to 6 weeks following delivery. Under no circumstances will care from civilian sources be promised for either the mother or the infant as it is not authorized.

(2) Treatment of the newborn infant in USMTFs includes care, both inpatient and outpatient, only during the first 6 weeks (42 days) following delivery. If the newborn infant requires care beyond the 6-weeks postnatal period, arrangement shall be made by the mother, or other responsible family member, for disposition to private, State, welfare, or other Federal facility.

(c) *Application for Care.* In making application for care authorized by § 728.71, former women members should apply either in person or in writing to the Armed Forces inpatient MTF nearest their home and present either their DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) or DD Form 256A (Honorable Discharge Certificate) as proof of eligibility for requested care. In areas with more than one Armed Forces MTF available and capable of providing required care, application should be made to the MTF of the service from which separated. Referral to other services MTFs may be made only when space is not available or capability does not exist in the MTF of the service from which the individual was separated.

§ 728.72 Applicants for Enrollment in the Senior Reserve Officers' Training Program.

When properly authorized, designated applicants (including applicants for enrollment in the 2-year program and Military Science II enrollees applying for Military Science III) may be furnished medical examinations at naval MTFs including hospitalization necessary for the proper conduct thereof. Medical care, including hospitalization, is authorized for diseases contracted or injuries incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for visits of observation.

§ 728.73 Applicants for Enlistment or Reenlistment in the Armed Forces, and Applicants for Enlistment in the Reserve Components.

(a) Upon referral by a commander of a Military Enlistment Processing Station (MEPS), formerly Armed Forces Examining and Entrance Station (AFEES), applicants shall be furnished necessary medical examinations, including hospitalization when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used only for diagnostic purposes, and not to correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.74 Applicants for Appointment in the Regular Navy or Marine Corps and Reserve Components, Including Members of the Reserve Components Who Apply for Active Duty.

(a) Necessary medical examinations shall be furnished, including hospitalization when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used only for diagnostic purposes, and not to correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.75 Applicants for Cadetship at Service Academies and Applicants for the Uniformed Services University of Health Sciences (USUHS).

(a) Upon presentation of a letter of authorization from the Department of Defense Medical Examination Review Board (DODMERB), applicants for cadetship at Service Academies (Navy, Army, Air Force, Coast Guard, and Merchant Marine) and applicants for the Uniformed Services University of Health Sciences (USUHS) shall be furnished medical examinations at facilities designated by the DODMERB. Hospitalization is authorized when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying or other defects. Examinations shall be performed and disposition of completed forms made in accordance with BUMEDINST 6120.3M.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or at MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.76 Naval Home Residents.

Necessary medical and dental care, both inpatient and oupatient, shall be furnished residents of the Naval Home when requested by the Governor of the Home. In an emergency, care may be rendered without prior approval of the Governor; however, the Governor of the Home should be contacted immediately and requested to furnish authorization.

§ 728.77 Secretarial Designees.

(a) Upon a showing of sufficient cause, the Secretary of the Navy may authorize individuals, not otherwise authorized by law, to receive such care as is available in naval MTFs in the United States. This discretionary authority is exercised most conservatively, on an individual basis. Civilian health care however cannot be authorized. Favorable action is usually taken on requests involving the following situations:

(1) Preadoption proceedings wherein an active duty member or a retired member has taken affirmative action to adopt a child.

(2) Custodianships and guardianships authorized by a court order wherein the member is designated by the court as the custodian or guardian and the child is fully dependent upon the active duty or retired member sponsor.

(3) Evaluation and selection of nonbeneficiaries who are donor candidates for an organ or tissue transplant procedure in behalf of a military service beneficiary.

(4) Nonbeneficiary participants in officially approved clinical research studies.

(5) Designation of designees of other military departments.

(6) Unremarried former spouses:

(i) Divorced before 1 February 1983, and

(ii) On the date of the final decree of divorce, dissolution, or annulment, had been married to the active duty or retired member for 20 or more years during which time the member or former member performed at least 20 years of service creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and

(iii) Requires care for a condition incurred during or caused/aggravated by conditions associated with the member's or former member's creditable service, and

(iv) Does not have medical coverage under an employer-sponsored health plan which will provide for the care required.

(7) In other instances wherein the circumstances clearly merit the providing of treatment in naval MTFs, and in which the best interest of the patient, the Navy, *and* the Government will be served, favorable Secretarial action may result. The mere need of medical care by a former beneficiary or other person, alone, will not support approval of such a request.

(b) Requests for consideration shall be submitted to the Commander, Naval Medical Command (MEDCOM-33) by applicants via their command, when applicable, or by the Medical Department command concerned. Requests should include any pertinent information which will support resolution. Requests:

(1) Involving preadoption must include a legible reproducible copy of the court order which names the sponsor and identifies the other participating parties.

(2) Involving custodianships and guardianships must include a legible reproducible copy of the court order, identification of the parties, and also identify any amounts of income to which the ward is entitled.

(3) In behalf of participants in clinical research studies must include:

(i) Sufficient clinical information concerning the nature of the study.

(ii) Benefits which may accrue to the individual.

(iii) The extent, if any, to which access by other authorized beneficiaries will be impaired.

(iv) Benefits which will accrue to the command, e.g., enhancement of training, maximum utilization of specialized facilities, etc.

(v) Recommended duration of designation.

(vi) Whether the consenting individual has been informed concerning the nature of the study, its personal implications, and freely consents.

(4) In behalf of unremarried former spouses must include:

(i) A notarized copy of the marriage license.

(ii) A statement attesting to the fact that the former husband achieved 20 or more years of creditable military service during the time of the marriage.

(iii) Copy of divorce decree with official date.

(c) Secretarial designee status has been granted by the Secretary of Defense for full-time Schedule "A" faculty members of the Uniformed Services University of Health Sciences (USUHS) who have been provided documentation substantiating their eligibility and, where necessary, an eligibility termination date. These personnel are authorized routine care at the Naval Hospital, Bethesda, MD. Only emergency treatment is authorized these personnel at other naval MTFs while they are traveling on official university business. The letter of authorization excludes routine dental care, prosthetic appliances, and spectacles.

(d) The following civilian officials within the Government, the Department of Defense, and military departments have been granted blanket Secretarial designation for medical and emergency dental care in naval MTFs in the United States at interagency inpatient and outpatient rates. EXCEPTION: Charges for outpatient care provided in the National Capital Region shall be waived:

(1) The President.

(2) The Vice President.

(3) Members of the Cabinet.

(4) Article III Federal Judges.

(5) U.S. Court of Military Appeals Judges.

(6) Members of Congress.

(7) The Secretary, Deputy Secretary, and the Assistant Secretaries of Defense.

(8) The Under Secretary of Defense for Policy.

(9) The Under Secretary of Defense for Research and Engineering.

(10) The Secretaries, Under Secretaries, and the Assistant Secretaries of the Military Departments.

§ 728.78 American Red Cross Representatives and Their Dependents.

(a) *Potential Beneficiaries.*

(1) Volunteer workers.

(2) Full-time, paid employees.

(3) Dependents of personnel enumerated in § 728.78(a) (1) and (2) when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care Authorized.* (1) When services of the American Red Cross (ARC) have been accepted in behalf of the Federal Government under applicable DOD regulations, beneficiaries in § 728.78(a)(1) are considered "employees" of the Government for the purpose of this part and are authorized health care in USMTFs, both in and outside the United States for work-related conditions. See § 728.53(a)(2) regarding the specific application of this authorization.

(2) Beneficiaries enumerated in § 728.78(a) (1) and (2) are authorized health care in USMTFs located outside the United States on a reimbursable basis for both work and nonwork-related conditions. Those enumerated in § 728.78(a)(1), however, are not required to reimburse the Government for treatment of work-related conditions under the OWCP (see § 728.53(a)(2)).

(3) Beneficiaries identified in § 728.78(a) (1), (2), and (3) are authorized emergency care on a reimbursable basis in USMTFs outside the continental United States and in Alaska where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

(c) *Records Disposal.* Upon completion of treatment of accredited representatives of the American Red Cross or their dependents, medical records, including all clinical records and x-ray films, shall be forwarded to the Medical Director, National Headquarters, American Red Cross, 20th and D Streets, N.W., Washington, DC 20006.

§ 728.79 Employees of Federal Contractors and Subcontractors.

(a) *Beneficiaries.* (1) U.S. citizen contractor, engineering, and technical service personnel designated as U.S. Navy Technicians.

(2) Civilian employees of contractors and subcontractors operating under U.S. Government contracts.

(3) Dependents of personnel enumerated in § 728.79(a) (1) and (2) when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care Authorized.* (1) Beneficiaries identified in § 728.79(a) (1) and (2) may be provided emergency care in naval MTFs, on a reimbursable basis, for illnesses and injuries occurring at work in or outside the United States.

(2) While serving outside the continental United States or in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals, beneficiaries identified in § 728.79(a) (1), (2), and (3) may receive hospitalization and necessary outpatient services in naval MTFs on a reimbursable basis. Except for beneficiaries in § 728.79(a)(1) who are serving aboard naval vessels, all other enumerated beneficiaries may only be hospitalized for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

§ 728.80 U.S. Government Employees.

(a) Civil service employees of all Federal agencies, including teachers employed by the Department of Defense Dependents' Schools (DODDS), and their dependents may be provided hospitalization and necessary outpatient services, on a reimbursable basis, outside the continental limits of the United States and in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Except for employees who are serving aboard naval vessels, hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

(b) Such civilian employees and their dependents may be provided medical, surgical, dental treatment, hospitalization, and optometric care on a reimbursable basis at installations in the United States which have been designated remote by the Secretary of the Navy for the purpose of providing medical care.

(c) The major objective of the following programs for civil service employees, regardless of location, is emergency treatment to relieve minor ailments or injuries with the idea of keeping the employee on the job:

(1) The Department of Labor, Office of Workers' Compensation Programs (OWCP) governs the overall medical care program for employees of the Government who sustain injuries while in the performance of duty, including diseases proximately caused by conditions of employment (see § 728.53).

(2) Federal civil service employees and applicants for such employment are authorized services as outlined in chapter 22, section XIII, of the Manual of the Medical Department. Military Sealift Command (MSC) civilian marine personnel (authorized additional care and services as outlined in BUMEDINST 6320.52 and that care in § 728.53(a)(7)) and members of the National Oceanic and Atmospheric Administration (NOAA) serving with the Navy are also included.

(3) Under the technical control of the Surgeon General of the Army, the DOD Civilian Employees' Health Service is responsible for administering the health program for all Federal civil service employees in the District of Columbia area.

§ 728.81 Other Civilians.

(a) *General.* In an emergency, any person may be rendered care in naval MTFs to prevent undue suffering or loss of life or limb. Care shall be limited to that necessary only during the period of the emergency, and if further treatment is indicated, action shall be initiated to transfer the patient to a private physician or civilian facility as soon as possible. Further, subject to the provisions of § 728.3, the following personnel are authorized care as set forth.

(b) *Beneficiaries and Extent of Care.* (1) Civilian employees paid from nonappropriated funds, including Navy exchange employees and service club employees, shall be provided all occupational health services. Treatment of occupational illnesses and injuries other than emergency care shall be in accordance with rules and regulations of the Office of Workers' Compensation Programs (see § 728.53).

(2) Civilians attending the Federal Bureau of Investigation (FBI) Academy, Marine Corps Development and Education Command, Quantico, VA may be rendered care at the Naval Medical Clinic, Quantico, VA for emergencies. Such persons who are in need of hospitalization for injuries or disease may be hospitalized and classed as civilian humanitarian nonindigents with the approval of the cognizant hospital's commanding officer. EXCEPTION: Certain individuals, such as employees of the Federal Bureau of Investigation who are injured in the line of duty, may be entitled to care at the expense of the Office of Workers' Compensation Programs (OWCP) (see § 728.53).

(3) The following civilians who are injured or become ill while participating in Navy or Marine Corps sponsored sports, recreational or training activities may be rendered care on a temporary (emergency) basis until such time as disposition can be effected to an appropriate source.

(i) Members of the Naval Sea Cadet Corps.

(ii) Junior ROTC/NDCC (National Defense Cadet Corps) cadets.

(iii) Civilian athletes training or competing as part of the U.S. Olympic effort.

(iv) Civilians competing in Navy or Marine Corps sponsored competitive meets.

(v) Members of Little League teams and Youth Conservation groups.

(vi) Boy Scouts and Girl Scouts of America.

(4) Other civilian personnel included below are not normally eligible for care in naval MTFs; however, under the conditions set forth, care may be rendered.

(i) Potential Beneficiaries.

(A) Civilian representatives of religious groups.

(B) Educational institutions representatives.

(C) Athletic clinic instructors.

(D) USO representatives.

(E) Celebrities and entertainers.

(F) Social agencies representatives.

(G) Others in a similar status to those in § 728.81(b)(4)(i) (A) through (F).

(H) News correspondents.

(I) Commercial airline pilots and employees.

(J) Volunteer workers. This category includes officially recognized welfare workers, other than Red Cross.

(ii) Care Authorized.

(A) Persons enumerated in § 728.81(b)(4)(i) (A) through (G), who are contracted to provide direct services to the Armed Forces and who are acting under orders issued by the Department of Defense or one of the military departments to visit military commands overseas, and their accompanying dependents, may be provided medical care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate. Inpatient care shall be limited to acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prostheses or orthodontia.

(B) Persons enumerated in § 728.81(b)(4)(i) (H) and (I) are authorized emergency medical and dental care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate.

(C) Persons enumerated in § 728.81(b)(4)(i)(J), both within and outside the 48 contiguous United States and the District of Columbia, may receive care in naval MTFs for injuries or diseases incurred in the performance of duty as beneficiaries of OWCP (see § 728.53). Additionally, if such volunteers are sponsored by an international organization (e.g., the United Nations) or a voluntary nonprofit-relief agency registered with and approved by the Advisory Committee on Voluntary Aid (e.g., CARE), they may receive other necessary nonemergency medical care and occupational health services on a reimbursable basis while serving outside the 48 contiguous United States and the District of Columbia.

§ 728.82 Individuals Whose Military Records are Being Considered for Correction.

Individuals who require medical evaluation in connection with consideration of their individual circumstances by the Navy, Army, and Air Force Board for Correction of Military Records are authorized evaluation, including hospitalization when necessary for the proper conduct thereof.

§ 728.83 Persons in Military Custody and Nonmilitary Federal Prisoners.

(a) Potential Beneficiaries.

(1) Military prisoners.

(2) Nonmilitary Federal prisoners.

(3) Enemy prisoners of war and other detained personnel.

(b) *Care Authorized.*

(1) Military Prisoners:

(i) Whose punitive discharges have been executed but whose sentences have not expired are authorized all necessary medical and dental care.

(ii) Whose punitive discharges have been executed and who require hospitalization beyond expiration of sentences are not eligible for care but may be hospitalized as civilian humanitarian nonindigents until final disposition can be made to some other appropriate facility.

(iii) On parole pending completion of appellate review or whose parole changes to an excess leave status following completion of sentence to confinement while on parole are members of the military service and as such are authorized care as outlined in subpart B. An individual on parole whose punitive discharge has been executed is not a member of the military service and is therefore not entitled to care authorized by § 728.82. If the circumstances are exceptional, individuals herein who are not authorized care may request Secretarial designee status under the provisions of § 728.77.

(2) Nonmilitary Federal Prisoners. Under the provisions of § 728.82, nonmilitary Federal prisoners are authorized only emergency medical care. When such care is being rendered, the institution to which prisoners are sentenced must furnish necessary guards to effectively maintain custody of prisoners and assure the safety of other patients, staff members, and residents of the local area. Under no circumstances will military personnel be voluntarily utilized to guard or control such prisoners. Upon completion of emergency care, arrangements will be made immediately to transfer the prisoners to a nonmilitary MTF or to return the prisoners to the facility to which sentenced.

(3) Enemy Prisoners of War and Other Detained Personnel. Subject to the provisions of § 728.3, enemy prisoners of war and other detained personnel are entitled to and may be rendered all necessary medical and dental care.

Subpart H—Adjuncts to Medical Care

§ 728.91 General.

Adjuncts to medical care include but are not limited to prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, wheel chairs, hospital beds, and similar medical support items or aids which are required for the proper care and management of the condition being treated. Generally, the expenses incurred for procurement of such items, either from civilian sources as supplemental care or from stocks maintained by the facility, are payable from operation and maintenance funds available for the support of naval MTFs. However, certain adjuncts may be cost-shared under CHAMPUS for CHAMPUS-eligible individuals under the circumstances enumerated in the cooperative care or service criteria of § 728.4(aa).

§ 728.92 Policy.

(a) Adjuncts to medical care shall be provided at naval MTFs to eligible beneficiaries receiving inpatient or outpatient care when, in the opinion of the attending physician, such adjuncts will offer substantial assistance in overcoming the handicap or condition and thereby contribute to the well-being of the beneficiary.

(b) Unless necessary for humanitarian reasons, orthopedic and prosthetic appliances are not to be furnished on an elective basis to members of the naval service with short periods of service remaining when the defect requiring the appliance existed prior to entry into service and when such members are to be separated from the service because of these defects.

(c) For active duty members, the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear shall be in the same quantity as provided in the initial clothing allowance.

(d) The number of orthopedic and prosthetic appliances issued or replaced for other authorized recipients shall be based upon the individual's requirements as determined by the attending physician and shall be consistent with the highest standards of modern medicine.

(e) Former members of the uniformed service should be advised that they may obtain durable medical equipment, medical care, and adjuncts from Veterans Administration facilities.

(f) Dependents are authorized certain adjuncts in accordance with the provisions of § 728.32 and in instances where items are not normally authorized at the expense of the Government, they may be provided at cost to the United States if available from

Government stocks under the following conditions:

(1) Outside the United States.

(2) At specific stations within the United States which have been authorized by the Secretary of the Navy to sell these items.

§ 728.93 Chart of Adjuncts.

The following chart and footnotes provide information relative to adjuncts which may be furnished the several categories of beneficiaries eligible for medical care at naval MTFs.

Adjuncts	Active duty and retired members	Others authorized the same benefits as active duty or retired members [8]	Dependents authorized the same benefits	Other beneficiaries [8]
Ambulance Service	Yes	Yes	Yes [1]	No.
Artificial Eyes	Yes	Yes	Yes	Maybe.[3]
Artificial Limbs	Yes	Yes	Yes	Maybe.[3]
Contact or Special Lenses [11]	Yes [4]	Yes [4]	Maybe [2 4 6]	No.
Crutches [7]	Yes	Yes	Yes	Yes.
Dental Prostheses	Yes	Yes	Maybe [9]	Maybe.[9]
Elastic Stockings	Yes	Yes	Yes	Yes.
Hearing Aids [10]	Yes [5]	Yes [5]	Maybe [2]	Maybe. [3]
Hearing Aid Parts and Batteries.	Yes [10]	Yes [10]	Maybe [2 10]	No.
Hospital Beds [7]	Yes	Yes	Yes	Yes.
Joint Braces	Yes	Yes	Yes	Yes.
Orthopedic Footwear	Yes	Yes	Maybe [2]	Maybe. [3]
Prosthetic Devices. Other [7]	Yes	Yes	Maybe [2]	No.
Respirators and Inhalators [7]	Yes	Yes	Yes	Yes. [1]
Resuscitators [7]	Yes	Yes	Yes	Yes. [1]
Spectacles	Yes	Yes	Maybe [2 6]	No.
Walking Irons [7]	Yes	Yes	Yes	Yes.
Wheel Chairs [7]	Yes	Yes	Yes	Yes.

[1] When considered medically appropriate by the attending physician.

[2] See § 728.92(f).

[3] Outside the United States and at designated remote stations when considered medically appropriate by the attending physician.

[4] Contact or special lenses are not to be issued solely for cosmetic reasons. Further guidelines are contained in BUMEDINST 6810.4G.

[5] Initial issue will include, in addition to the hearing aid, one spare receiver cord, approximately 1 month's supply of batteries, and a statement indicating make, model, type of receiver, serial number, code, part numbers, "B" battery voltage, and type of "A" and "B" batteries, as appropriate. Replacement of hearing aids shall be upon the same basis as the initial issue and, except in unusual circumstances, shall not be effected within 2 years of the initial furnishing or the last replacement of the appliance.

[6] Spectacles, contact lenses, or intraocular lenses may be provided those dependents with eye conditions which require these items for complete medical or surgical management of a condition other than ordinary refractive error. For further information, consult BUMEDINST 6810.4G.

[7] May be loaned on a custody basis at the discretion of the attending physician.

[8] See subpart of this part relating to specific beneficiary.

[9] When considered by the attending physician and dentist to be an adjunct to a medical or surgical condition other than dental and when in consonance with existing legislation and directives.

[10] For further guidelines, consult BUMEDINST 6320.41B.

[11] Includes intraocular lenses required for implantation upon removal of cataracts.

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

§ 728.101 General.

(a) *Notice of Eligibility (NOE).* While the NOE is basically a document that substantiates entitlement to a disability benefit equal to pay and allowances, it may be accepted when required to substantiate eligibility for benefits other than pay and allowances, i.e., treatment in USMTFs under the provisions of 10 U.S.C. 6148(d).

(b) *Title 10 United States Code 6148(d).* This code states, in part, that a . . . "member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment."

(c) *Physical Disability Benefits.* The following, excerpted and paraphased from SECNAVINST 1770.3, paragraph 10, is applicable when a reservist may be entitled to physical disability benefits.

(1) When a notice of eligibility (NOE) has been issued to a member hospitalized in a naval MTF and the attending physician is of the opinion that recovery is not anticipated or that the reservist is not expected to be fit for return to full duty within a reasonable period, a medical board shall be convened and the case shall be managed the same as that of a Regular member. A copy of the NOE shall accompany the medical board report forwarded to the Central Physical Evaluation Board. Disability benefits, equal to pay and allowances, shall continue in such cases until final disposition.

(2) There is no limited duty status, per se, for inactive reservists. However, if it is the opinion of the attending physician that a reservist is temporarily unfit for full duty, but will be fit for full duty following a period of convalescence or following duty with physical limitations, not to exceed 6 months, the physician may return the reservist to duty with a summary of the hospitalization or treatment. The summary shall set forth the limitations posed by the member's disability and the period of such limitations. Followup hospitalization, treatment, and evauation for the same condition may be provided at USMTFs during the period of restricted duty, if required. If, during the period of the restricted duty, it appears that the reservist will be *permanently* unfit for full duty, he or she should be promptly authorized to report for evaluation, treatment if required, and appearance before a medical board at the nearest naval MTF capable of accomplishing same. Admission to the sicklist is authorized, when required. Should the medical board recommend appearance before a physicial evaluation board, disability benefits equal to pay and allowances should continue until final disposition is effected.

§ 728.102 Care From Other Than Federal Sources.

The provisions of this subpart shall not be construed as authorizing care for reservists at other than Federal facilities or out of funds available for operation of USMTFs (supplemental care) after a period of active duty or a period of training duty ends, including travel to and from such training.

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1071-1088, 5031, 6148, 6201-6203, and 8140; and 32 CFR 700.1202.

SOURCE: 51 FR 18779, May 22, 1986, unless otherwise noted.

Subpart A—General

§ 732.1 Purpose.

To delineate and promulgate the authority and policies concerning inpatient and outpatient medical and dental care obtained from nonnaval sources by active duty Navy and Marine Corps members and outpatient care from nonnaval sources for active duty members of North Atlantic Treaty Organization (NATO) nations.

Provides the conditions under which the costs of such care may be borne by the Navy.

§ 732.2 Scope.

The provisions of this part are applicable for:

(a) Both inpatient and outpatient medical and dental care of U.S. Navy and Marine Corps personnel who incur disease or injury while on active duty. Reservists are entitled to care under the provisions of this part for conditions occurring during active duty for training and inactive duty training (drill), including travel to and from training sites.

(b) The outpatient care of naval members of NATO Status of Forces Agreement (SOFA) nations (Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom) who are stationed in or passing through the United States in connection with their official duties.

§ 732.3 Background.

(a) The special authority of the Manual of the Medical Department (MANMED), article 11-7(3)(b), applicable to patients under the jurisdiction of commanding officers of naval hospitals, remains in effect and is to be used for nonnaval medical and dental care of such patients. Guidelines concerning care for other eligible beneficiaries, not authorized care by this part, are contained in BUMEDINST 6320.58 and Part 728 of this chapter. Subpart B provides guidelines and procedures whereby naval commands may:

(1) Arrange for appropriate care in other than naval facilities for authorized members under their jurisdiction.

(2) Assist in those instances when authorized personnel obtain civilian medical or dental care for themselves and seek reimbursement from the Navy.

(3) Authorize payment directly to providers of care when payment has not been made by the member or by someone acting on behalf of the member.

(4) Assist active duty Navy and Marine Corps maternity patients in obtaining care in civilian facilities, when appropriate, and arranging for payment of charges for the member and the routine care of the newborn in accordance with the Assistant Secretary of Defense for Health Affairs memo of 16 May 1979, Inpatient routine newborn care: Active duty female maternity episode, and Assistant Secretary of Defense for Health Affairs memo of 18 July 1979, Active duty female maternity episode.

(b) Subpart B also delineates areas over which geographic naval medical commands have responsibilities for administration of nonnaval medical and dental care program functions. Program management is vested in the Commander, Naval Medical Command, Washington, DC (MEDCOM-333).

(c) The Assistant Secretary of Defense (Comptroller) memo of 12 March 1981, Reimbursement for inpatient medical care provided foreign military and diplomatic personnel or their dependents in military hospitals in the United States, outlines the provisions of Pub. L. 96-527. This memo provides that inpatient care of foreign military members in the United States shall not be rendered at the expense of the United States Government. Accordingly, only the cost of outpatient care shall be paid under the provisions of this part for active duty members of NATO nations who are stationed in or passing through the United States in connection with their official duties.

§ 732.4 Action.

All commands shall ensure that personnel under their cognizance are made aware of the contents of this part. Failure to comply with the prescribed requirements could result in the Navy's denial of financial responsibility for the expenses of medical or dental care obtained.

Subpart B—Medical and Dental Care From Nonnaval Sources

§ 732.11 Definitions.

Unless otherwise qualified herein, the following terms when used throughout this part are defined as follows:

(a) *Active duty.* Full-time duty in the active military service of the United States. This includes duty on the active list; full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active duty for training.* A period of duty performed in the active military service by a member of a reserve component under orders by competent authority for a specified period which provides for automatic reversion to inactive duty when the specified period of active duty is completed. Includes not only the period of time from reporting to the time of release but also the time of travel to and from the duty station, not in excess of the allowable constructive travel time (see SECNAVINST 1770.3 and DOD Military Pay and Allowances Entitlements Manual (DODPM) paragraphs 10242 and 10243).

(c) *Constructive return.* For purposes of medical and dental care, return of an unauthorized absentee to military control may be accomplished through notification of appropriate military authorities (§ 732.13(e) amplifies).

(d) *Designated Uniformed Services Treatment Facilities (Designated USTFs).* In accordance with Pub. L. 97-99, the following former U.S. Public Health Service (USPHS) facilities are now "designated USTFs" for the purpose of rendering medical and dental care to all categories of individuals entitled to care under the provisions of this part.

(1) *Hospitals.* (i) Wyman Park Health Systems, 3100 Wyman Park Drive, Baltimore, MD 21211, Telephone (301) 338-3000.

(ii) Allston-Brighton Aid and Health Group, 77 Warren Street, Boston, MA 02135, Telephone (617) 782-3400.

(iii) Hospital of St. John, 2050 Space Park Drive, Nassau Bay, TX 77058, Telephone (713) 757-7430.

(iv) Seattle Public Health Hospital, 1131 14th Avenue South, Seattle, WA 98144, Telephone (206) 324-7650.

(v) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Isla[illegible] NY 10304, Telephone (212) 447-[illegible]0.

(2) *Clinics.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103, Telephone (207) 780-3210.

(ii) Lutheran Medical Center, Downtown Health Care Services, New Post Office Bldg., W. 3rd Street and Prospect Avenue, Cleveland, OH 44113, Telephone (216) 522-4524.

(iii) St. Mary's Hospital, 440 Avenue North, Galveston, TX 77550, Telephone (713) 757-7430.

(iv) St. Joseph Ambulatory Care Center, 204 U.S. Customs Bldg., 701 San Jacinto Street, Houston, TX 77002, Telephone (713) 757-7430.

(v) Family Practice Center, Port Arthur, TX 77640, Telephone (713) 757-7430.

(e) *Duty status.* The performance category of the claimant at the time medical or dental care is received, either active duty or nonactive duty. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, when performing active duty for training or inactive duty for training, are considered in a duty status, including their allowable constructive travel time to and from training.

(f) *Emergency.* A situation where the need or apparent need for medical or dental attention is such that time does not permit obtaining prior approval for civilian medical care.

(g) *Inactive duty training (Drill).* Includes that period between muster, dismissal, and allowable constructive travel time to and from such drills (see DODPM paragraphs 10242 and 10243).

(h) *Maternity emergency.* A condition commencing or exacerbating during pregnancy in a manner such that a delay caused by referral to a USMTF or designated USTF would jeopardize the welfare of the mother or her unborn child.

(i) *Medical management.* When an active duty member presents for treatment at a naval MTF, that patient is considered under the medical management of a naval physician when a naval physician exercises primary and continuing decision authority regarding diagnosis and treatment, regardless of whether the patient is actually treated by that physician.

(j) *Non-Federal care.* Medical or dental care provided by civilian sources (includes State, local, and foreign MTFs).

(k) *Nonnaval care.* Medical or dental care provided by other than naval MTFs. Includes care in other USMTFs, VA facilities, as well as from civilian sources.

(l) *Office of Medical Affairs (OMA) or Office of Dental Affairs (ODA).* Designated offices, under the program management control of COMNAVMEDCOM (MEDCOM-333) and the direct control of regional medical commands, responsible for the continued administration of the requirements of this part.

(m) *Prior approval.* Permission granted to an individual for a specific episode of necessary but nonemergent maternity, medical, or dental care.

(n) *Reservist.* A member of the Naval or Marine Corps Reserve.

(o) *Supplemental care.* When an active duty member is under the medical management (see § 732.11(i)) of a naval MTF physician and required care is not available at that facility, any additional materials or professional and personal services ordered by qualified naval MTF providers and obtained for the care of that patient are supplemental. This includes necessary referrals to civilian sources. Costs are chargeable to the operation and maintenance funds available for operation of the facility requesting care or services For the exception to this policy, see § 732.18(c)(4).

(p) *Unauthorized absence.* Absence without authority from a member's command or departure without authority from the assigned place of duty.

(q) *Uniformed Services Medical Treatment Facilities (USMTF).* Health care facilities of the Army, Air Force, Coast Guard, Navy, and the former U.S. Public Health Service facilities listed in § 732.11(d) that have been designated as USTFs in accordance with DOD and Department of Health and Human Services directives.

§ 732.12 Program management.

(a) *In the 48 Contiguous United States and Alaska.* Under program management control of COMNAVMEDCOM (MEDCOM-333) and direct control of regional medical commands, OMAs and the ODA listed in § 732.18(f)(1) shall:

(1) Exercise coordination over this program within their areas of responsibility including:

(i) Granting or denying approval for the procurement of nonemergency care from civilian sources.

(ii) Adjudicating medical and dental care claims.

(iii) Notifying COMNAVMEDCOM (MEDCOM-333, Autovon 294-1127 or Commercial 202-653-1127) in a situational report (MED 6320-30) when it appears that an episode of non-Federal care will extend beyond 15 days or will cost more than $25,000. Before calling, be prepared to furnish the following concerning the patient:

(A) Name, grade or rate, and social security number.

(B) Name of non-Federal medical facility rendering treatment.

(C) Date admitted.

(D) Reason patient cannot be or has not been moved to a Federal facility.

(E) Expected duration of non-Federal treatment.

(F) Expected total cost of non-Federal care.

(iv) Determining the need for medical boards subsequent to completion of nonnaval medical care and notifying COMNAVMEDCOM (MEDCOM-25), via the regional medical command, of the determination (see § 732.19 for further amplification).

(v) Issuing letters, upon written request, to recruiting offices far removed from USMTFs and designated USTFs granting blanket approval for civilian medical care of active duty recruiting office personnel. With a full realization that such blanket approval is an authorization to obligate the Government without individual prior approval, OMAs and the ODA shall ensure that:

(A) Each letter specifies a maximum dollar amount allowable in each instance of care.

(B) The location of each recruiting office authorized to obligate is clearly delineated.

(C) Travel distance and time required to reach the nearest USMTF, designated USTF, or VA facility have been considered.

(D) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(E) All requests for blanket authorization from other than recruiting offices are forwarded to COMNAVMEDCOM (MEDCOM-333), via the chain of command, for concurrence.

(F) COMNAVMEDCOM (MEDCOM-333) is made an information addressee on each letter of authorization.

(2) Furnish a monthly letter report (MED 6320-23) to COMNAVMEDCOM (MEDCOM-333), with a copy of the dental portion to MEDCOM-32, to reach the Command no later than the 15th day of the month following the month being reported. The report shall reflect the total cost of claims adjudicated and:

(i) The number of:

(A) Claims approved.

(B) Hospital days and dollar value of each.

(C) Outpatient visits and dollar value of each.

(D) Dental visits and dollar value of each.

(E) Ambulance trips and dollar value of each.

(F) Unadjudicated claims on hand at both the beginning and end of month.

(G) Claims on hand more than 30 days.

(H) Inpatient days, outpatient visits, and dollar value of each category of care provided by designated USTFs.

(I) Inpatient hospital days and dollar value of care provided by designated USTFs.

(J) Pharmacy, laboratory, and X-ray services (paid separately from care in § 732.12(a)(2)(i) (B) and (D)). Include the average cost of each and the total cost of all.

(K) Maternity episodes and average cost.

(ii) Name, grade or rate, social security number, and disposition (date and type) of each patient for whom notification is required in accordance with § 732.12(a)(1)(iii).

(iii) Amount of returned checks and overpayments submitted to OMA or ODA and fiscal year to which funds are being credited.

(iv) Personnel changes in OMA or ODA for the month.

(3) Coordinate, with each member and each member's command, convalescent leave granted in accordance with the Naval Military Personnel Manual (MILPERSMAN) and Marine Corps Order P1050.3E.

(4) Assume medical cognizance responsibility for members hospitalized in nonnaval facilities within the OMA's geographical area of responsibility.

(b) *Outside the 48 Contiguous United States and Alaska.* (1) In areas outside the 48 contiguous United States and Alaska, individual commanding officers are authorized to obtain required non-Federal care for members under their command when there are no Federal or NATO SOFA facilities available, or if available, are unable to render required care. If the commanding officer considers it in the best interest of the United States, immediate payment may be effected for such services. When payment is made out of any funds other than those specified for non-Federal medical or dental care, the commanding officer shall apply for reimbursement in accordance with the provisions of this part.

(2) The adjudicating authority at activities listed in § 732.18(f)(2) shall:

(i) Exercise coordination and technical control over this program outside the 48 contiguous United States and Alaska, including the coordination and cognizance responsibilities listed in § 732.12(a) (3) and (4), as appropriate.

(ii) Adjudicate medical and dental care claims.

(iii) Report non-Federal care expenditures as delineated in § 732.12(a)(1)(iii) and § 732.12(a)(2).

§ 732.13 General.

If medical or dental care is required and there are no naval facilities available, initial application shall always be made to other available Federal medical or dental facilities.

(FEDERAL FACILITIES: NAVY, ARMY, AIR FORCE, VETERANS ADMINISTRATION, AND DESIGNATED FORMER U.S. PUBLIC HEALTH SERVICE FACILITIES listed in § 732.11(d).)

Additionally, members shall obtain emergency and nonemergency care from military facilities of the host country, or if applicable, from civilian sources under the NATO SOFA when U.S. facilities are not available and the member is stationed in or passing through a NATO SOFA nation. When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from civilian sources under the following conditions:

(a) *Emergency care.*—(1) *Maternity Emergency.* When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a uniformed services or designated uniformed services medical treatment facility, would jeopardize the welfare of the mother or her unborn child, the following constitutes indications for admission to a non-Federal facility:

(i) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.

(ii) Obstetric conditions:

(A) Spontaneous abortion, with first trimester hemorrhage.

(B) Premature term labor with delivery.

(C) Severe pre-eclampsia.

(D) Hemorrhage, second and third trimester.

(E) Ectopic pregnancy with cardiovascular instability.

(F) Premature rupture of membranes with prolapse of the umbilical cord.

(G) Obstetric sepsis.

(H) Any other obstetrical condition that, by definition, constitutes an emergent circumstance.

(2) *Medical or dental.* A situation where the need or apparent need for medical or dental attention is such that time does not permit obtaining authority in advance.

(3) *Authority to adjudicate.* Only in such a defined emergency shall medical, dental, or maternity services be obtained under this part by or on behalf of eligible personnel without the prior authority covered below. As soon as possible after obtaining such care, the appropriate OMA or ODA listed in § 732.18(f) shall be provided the following information. This information will be used to make arrangements for transfer of the member and, if appropriate, newborn infant(s), to a Federal facility or for such other action as is appropriate. For the purpose of this part, this information shall be provided to the OMA or ODA in addition to the requirements of article 4210100 of MILPERSMAN or Marine Corps Order 6320.3B

(i) Name, grade or rate, and social security number of patient.

(ii) Name of non-Federal medical or dental facility rendering treatment.

(iii) Date(s) of such treatment.

(iv) Nature and extent of treatment or care already furnished.

(v) Need or apparent need for further treatment (for maternity patients, need or apparent need for further care of infant(s) also).

(vi) Earliest date on which transfer to a Federal facility can be effected.

(b) *Nonemergency care.* The health benefits advisor (HBA) serving the regional medical command assigned responsibility for the OMA or ODA function shall:

(1) Receive information to complete sections I and III of NAVMED 6320/10's for coordination of requests for prior or after the fact approval of nonemergent medical or dental care and requests for approval of nonemergency maternity care (§ 732.13(f)).

(2) By endorsement, forward the request to the appropriate chief of service explaining non-Federal care regulations as they pertain to the request. The chief of service shall respond to the request within 24 hours.

(3) Upon return by the chief of service of an approved or disapproved NAVMED 6320/10 request for prior approval of nonemergency medical, dental, or maternity care, the HBA shall forward the original form to the member, a copy to the OMA or ODA, and retain a copy on file.

(c) *Eligibility*—(1) *Regular members.* To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense. Regular active duty naval members must be in a duty status at the time care is provided.

(2) *Reservists.* Reservists on active duty for training and inactive duty training (drill), including leave and liberty therefrom, are considered to be in a duty status while participating in such training and while en route to and from such training. Accordingly, they are entitled to care for illnesses and injuries occurring while in such a status.

(3) *Absent without authority.* Naval members absent without authority during an entire episode of treatment are not eligible. The only exception occurs when the member's illness or injury is determined to have been the direct cause of the unauthorized absentee status. In such an instance eligibility shall be determined to have existed from the day and hour of such injury or illness, provided the member was not in an unauthorized absentee status prior to the initiation of treatment and the member is directly returned to military control.

(4) *Constructive return.* When constructive return is effected in accordance with § 732.13(e), entitlement will be determined to have existed from 0001 of the day constructive return was accomplished, not necessarily the day and hour care was initiated.

(d) *Notification of illness or injury.* If able, members must notify or cause their parent command or the nearest naval activity to be notified of the circumstances requiring medical or dental attention in a non-Federal facility. The member's exact location shall be conveyed to facilitate movement, if appropriate, to a Federal facility. Transfer to a Federal facility shall be accomplished as soon as possible to ensure that disability benefits are not jeopardized. Should movement be delayed due to actions of the member or the member's family, payment may be denied for all care received after provision of written notification by the OMA or ODA. Denial shall be for care received after the member's condition has stabilized and after the cognizant OMA or ODA has made a request to the attending physician and hospital administration for the member's release from the civilian facility. This notification must specify the date and time the Navy will terminate its responsibility for payment. Care rendered subsequent to receipt of the written notification shall be at the expense of the member.

(1) When it becomes known that a member intends to seek medical care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. The member should be requested to sign a statement on a Standard Form 600, Chronological Record of Medical Care, for inclusion in the member's Health Record, that counseling has been accomplished and that the member understands the significance of receiving civilian care which is unauthorized. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling shall include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding the possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that should hospitalization become necessary, or other time is lost from the member's place of duty, such lost time will be chargeable as "ordinary leave".

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier or when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member's fitness for duty.

(2) When it becomes known that a member has already had non-Federal medical care without prior authorization, the member must be referred to a uniformed services medical officer (preferably Navy) to determine fitness for duty. At this time, the counseling measures delineated in § 732.13(d)(1)(iii), (iv), and (v) must be taken.

(e) *Constructive return.* See § 732.11(c) for definition.

(1) For members in an unauthorized absentee status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care, orally or in writing, that the Navy accepts responsibility for a naval member's care. The naval activity that provides this information shall also provide documentation of such notification to the appropriate OMA or ODA.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested by civil authorities for a civil offense and naval authorities have been notified that the member can be released to military control.

(2) When a naval member has been arrested for a civil offense while in an unauthorized absentee status and the offense does not allow release to military control, constructive return is not accomplished. The individual is thus responsible for medical or dental care required prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(f) *Maternity care.* (1) All pregnant active duty members who reside outside the Military Health Services System (MHSS) catchment areas of uniformed services facilities with inpatient capability are permitted to choose whether to deliver in a closer civilian hospital or travel to a uniformed services facility. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member shall obtain authorization in accordance with §§ 732.13(b)(1) and 732.16. OMA officials shall not approve requests for care in non-Federal facilities for members residing within an MHSS catchment area unless:

(i) Capability does not (did not) exist at the uniformed services or other Federal MTF.

(ii) An emergency situation (as outlined in § 732.13(a)(1)) necessitated delivery or other treatment in a non-Federal facility.

(2) Inasmuch as confinement and delivery are foreseeable, prior approval shall be obtained for delivery in a non-Federal facility at Government expense. This approval shall be obtained from the HBA serving the OMA delineated in § 732.18(f) for the area where the duty station of the member is located. The provisions of this subpart do not apply to maternity emergency situations.

(i) Requests for prior approval shall be disapproved when members (residing in an MHSS catchment area) have been granted annual leave to commence just prior to the expected delivery date and to end after the expected delivery date. Requests for after-the-fact approval shall likewise not be honored in instances of normal delivery.

(ii) Members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders shall be granted either prior or retroactive approval as the situation warrants.

(3) Normal delivery at or near the expected delivery date shall not be considered an emergency for members residing within an MHSS catchment area wherein delivery was expected to have occurred and, unless provided for in this part, shall not be reason for delivery in a civilian facility at Government expense.

(4) In a maternity emergency, the provisions of § 732.13(a)(3), relative to arrangements for transfer of the member, also apply to the newborn infant(s).

§ 732.14 Authorized care.

(a) *Medical.* Consultation and treatment provided by physicians or at medical facilities, as well as procedures not involving treatment when directed by COMNAVMED COM are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc.

(b) *Maternity episode.* If an active duty Navy of Marine Corps member qualifies for care under the provisions of § 732.13(f) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test, etc.) is a part of the mother's admission expenses. Regardless of the circumstances which necessitated delivery in a civilian facility or the way in which the charges are separated on the bill, the charges shall be paid from funds available for the care of the mother. Should the infant become a patient in his or her own right—either through an extension of the birthing hospital stay because of complications, transfer to another facility, or subsequent admission—BUMEDINST 6320.58 or Part 728 of this chapter are applicable.

(c) *Dental.* (1) Includes:

(i) All types of treatment rendered (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment rendered to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of an existing dental prosthesis when neglect of the repair would result in unserviceability of the prosthesis.

(iv) Any type of treatment rendered as an adjunct to medical or surgical care.

(v) All x-rays, drugs, etc., required to accomplish treatment or care in § 732.14(c)(1)(i) through 732.14(c)(1)(iv).

(2) In emergencies (no prior approval), excluded are all measures except those appropriate to relieve pain or abort infection.

(d) *Eye refractions and spectacles.* Includes refractions of eyes by physicians and optometrists and the furnishing and repair of spectacles.

(1) *Refractions.* A refraction may be obtained from a civilian source only when Federal facilities are not available and no suitable prescription is in the member's Health Record.

(2) *Spectacles.* When a member has no suitable spectacles and the lack thereof, combined with the delay resulting from obtaining them from a Federal source, would prevent the performance of duty; repair, replacement, or procurement from a civilian source may be authorized upon initiation of a request in accordance with § 732.16. Otherwise, the prescription from the refractionist, with proper facial measurements, must be sent for fabrication to the appropriate dispensing activity set forth in BUMED INST 6810.4G.

(3) *Contact lenses.* Neither examination for nor procurement of contact lenses is authorized by this part.

§ 732.15 Unauthorized care.

The following are not authorized by this part:

(a) Chiropractic services.

(b) Vasectomies.

(c) Tubal ligations.

(d) Breast augmentations or reductions.

(e) Psychiatric care, beyond the initial evaluation.

(f) Court ordered care.

(g) Other elective procedures.

§ 732.16 Authorizations.

Requests for prior or after the fact authorization shall be made on NAVMED 6320/10 and shall be submitted to the cognizant HBA after completion of sections I and III. The HBA will take the action indicated in § 732.13(b).

§ 732.17 NAVMED 6320/10, Statement of Civilian Medical/Dental Care.

In addition to its use as an authorization document (§ 732.16), a NAVMED 6320/10 is required in connection with payment for each instance of sickness, injury, or maternity care (except for the waiver outlined in § 732.18(b)) when treatment is received from a non-Federal source.

(a) *Preparation.* In preparation of claims for payment of nonnaval medical or dental care expenses, NAVMED

6320/10 shall be prepared in triplicate by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the individual concerned when on detached duty where a senior officer is not present. The diagnosis shall be included and if prior approval was not obtained for the use of non-Federal facilities, the circumstances which necessitated their use shall also be stated.

(b) *Signing.* Signature by the certifying officer on the NAVMED 6320/10 will be considered certification that documentation has been entered in the member's Health Record as directed in MANMED article 16-24. This responsibility is incumbent on the certifying officer for each episode of nonnaval medical or dental care. Signature by the member requesting reimbursement or payment implies agreement for release of information to the OMA or ODA receiving the claim for processing.

§ 732.18 Claims.

(a) *Preparation.* Claims shall be prepared using NAVMED 6320/10 and shall be submitted to the appropriate OMA or ODA. If a request has been made for prior or after the fact authorization in accordance with § 732.16, the NAVMED 6320/10 containing the approval shall be completed and submitted with the claim. Additionally, each claim shall include:

(1) Itemized bills submitted in quadruplicate to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(2) Acknowledgement of receipt of the services or supplies on the face of the bill, by separate certificate of the person receiving treatment or services, or by an officer having cognizance of the circumstances. This acknowledgement must include the statement "Services were received and were satisfactory."

(3) Separate bills for providers of care who charge on a "fee for service" basis unless the bill which includes such services is accompanied by:

(i) Receipts showing that the expenses have been defrayed by the physician, dentist, or other source of care submitting the bill.

(ii) A statement that the individual charging on a "fee for service" basis is a full-time employee of the payee.

(4) The complete address to which the check is to be mailed and the amount to be paid. This shall be indicated in sections IV and V of the NAVMED 6320/10.

(5) Paid receipts as well as itemized bills when expenses have already been paid by an individual, including a service member. In lieu of submission of paid receipts or itemized bills, the member may sign the face of the NAV COMPT Form 2160 as required by NAVCOMPT Manual 046393-1. Standard Form 1164, prepared in accordance with NAVCOMPT Manual 046377-2a and b, may be used to fill the requirement for a signed claim. Paid invoices supporting a claim for reimbursement on a Standard Form 1164 do not require certification. OMAs and the ODA shall certify the Standard Form 1164 and insert appropriate accounting classification thereon.

(b) *Processing.* Itemized bills, claims, or other documentary evidence of care received from non-Federal sources should be processed for payment by the cognizant OMA or ODA within 30 days of receipt. Advice on unusual or questionable instances of care may be requested from COMNAVMEDCOM (MEDCOM-333). When OMAs or the ODA already have information from messages of other correspondence which supports payment of a claim, the requirement for a NAVMED 6320/10 may be waived and the claim adjudicated. Claimants shall be advised by the OMA or ODA of any delay experienced in processing claims.

(c) *Adjudication of claims.* When required documents have been received by the OMA or ODA, a determination shall be made whether:

(1) Claimant is entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training (drill), was not an unauthorized absentee, etc.)

(2) Medical or dental care was rendered due to a bona fide emergency. Where questions arise as to the emer-

gent nature of the care, the claim and all documentation shall be forwarded to the appropriate clinical specialist at the nearest naval hospital for review.

(3) Prior approval had been granted for the medical or dental care if a bona fide emergency did not exist. If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim shall be denied.

(4) Claimed medical or dental benefits resulted from a referral by a USMTF. Should it be determined that the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the care is supplemental and is the responsibility of the referring USMTF. EXCEPTION: the local USMTF will not assume financial responsibility (i) when the civilian health care *is not* supplemental to continuing health care that was being provided by the local USMTF, and (ii) when the local USMTF is not organized nor authorized to provide the needed health care services (e.g., a patient needing inpatient care is diagnosed at a clinic without inpatient capability). Under the latter two circumstances, the civilian care is payable under the provisions of this part. Saturation of USMTF services or facilities does not fall within this exception.

(5) Medical or dental care is payable under the provisions of this part. If a determination is made to disapprove a claim, the member (and provider of care, when applicable) shall be provided a prompt and courteous letter stating the reason for the denial. The appropriate avenues of appeal (§ 732.22) will be included in the denial letter.

(d) *Disbursing activity.* Upon receipt of an approved claim, disbursing activities will forward a check to the appropriate payee and furnish the Authorization Accounting Activity (AAA) servicing COMNAVMEDCOM (i.e., NAVMEDCOM, National Capital Region, Bethesda, MD 20814) with copies of the NAVMED 6320/10 and with accounting data. OMAs, the ODA, and disbursing activities shall take precautions against duplicate payments in accordance with NAVCOMPT Manual 046073. For completion of the appropriate accounting classification data on the NAVMED 6320/10, the following are applicable:

Accounting Classification Code. This code shall include accounting data in the following sequence:

1	2	3	4	5	6	7	8	9
17*1804	1830	000	00018	0	000168	2D	000000	Cost Code **

* "For the third digit in coding element 1, enter the *last digit of the fiscal year current at the time claim is approved for payment,* e.g., a claim approved in November 1983 for care rendered in December 1982 would have the number "4" as the third digit in coding element 1, i.e., "1741804" wherein the third digit is the last digit of fiscal year 1984.

** This cost code, coding element 9, is a 12 digit coding element constructed as follows:

Digits	Data entry
1 thru 5	"99002" will always be entered.
6	"Q" if the services were inpatient, outpatient, or dental, and "E" if for ambulance service.
7	"1" if the patient was active duty Navy. "2" if the patient was active duty Marine Corps. "3" if the patient was Navy, Reservist. "4" if the patient was Marine Corps, Reservist. "5" for all others.
8***	"1" for inpatient care; "2" for outpatient care; "3" for dental care.

Digits	Data entry
9 and 10	Number of visits, occupied bed days, ambulance trips, or dental procedures, e.g., the entry for ten occupied bed days would be "10", and for three outpatient visits "03". Enter "00" for invoices involving services related to but billed separately from hospitalization charges.
11	"A" for medical and dental care rendered in the District of Columbia; Maryland; West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Virginia cities of Alexandria, Fairfax, and Falls Church. "B" for medical care rendered in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, and Wisconsin. "C" for medical care rendered in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. "D" for medical care rendered in Connecticut and New York. "E" for medical care rendered in Delaware, New Jersey, Ohio, and Pennsylvania. "F" for dental care rendered in the entire Northeast Region which includes the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. "G" for medical and dental care rendered in the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties. "H" for medical and dental care rendered in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas. "I" for medical and dental care rendered in the States of Arizona, Nevada, and New Mexico and the counties of Kern, San Luis, Obispo, San Bernadino, Santa Barbara, and all other counties of California south thereof. "J" for medical care rendered in the States of Colorado, Kansas, and Utah and the counties of Inyo, Kings, Tulare, and all other counties of California north thereof. "K" for medical and dental care rendered in the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming. "L" for medical and dental care rendered in the Pacific Region. "M" for medical and dental care rendered in the European Region. "N" for medical and dental care rendered in all other areas.
12	Last digit of the fiscal year in which claim is approved.

***Ambulance trips shall be coded as "1", "2", or "3" according to subsequent treatment.

(e) *Amount payable.* Amounts payable shall be those considered reasonable by the OMA or ODA after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where the services or supplies were furnished. Although rates specially established by the Veterans Administration or those used in Medicare are not controlling, they may be considered along with other facts.

(1) *Excessive charges.* If any charge is considered excessive, the provider of care should be apprised of the conclusion reached and provided an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction of the bill and the claim is that of a physician or dentist, the difference in opinions should be referred to the grievance committee of the provider's professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, all documentation should be forwarded to COMNAVMEDCOM (MEDCOM-333) for decision. Any charges above the allowable amount or charges for noncovered services are the responsibility of the service member.

(2) *Third party payment.* Payment shall not be withheld to seek payment from health benefit plans or from insurance policies for which premiums are paid privately by service members (see § 732.20 for possible recovery of payments action).

(3) *No-Fault insurance.* In States with no-fault automobile insurance requirements, the OMA or ODA shall notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(f) *Adjudication authority*—(1) *In the United States (Less Hawaii).* For the 48 contiguous United States, the District of Columbia, and Alaska, the following six regions have been designated as cohesive units to accept responsibility for medical cognizance, medical and dental claims processing and adjudication, and prior or after the fact approval or disapproval of requests for nonemergent medical, dental, or maternity care within their areas of responsibility In accordance with MANMED articles 2-22 and 6-54, controlling activities for medical care have been designated as "offices of medical affairs" (OMA) and for dental care, "office of dental affairs" (ODA). It is incumbent upon commanders of regional medical commands to communicate with other commands within their regions to ensure that proper messages and medical cognizance reports are furnished in accordance with higher authority directives.

(i) *Northeast Region.* The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA, 1 OMA, and 2 field office OMAs:

(A) Responsibility for dental matters for all States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Naval Hospital, Great Lakes, IL 60088, Tele: (A) 792-3940, (C) 312-688-3940.

(B) Responsibility for medical matters for the States of Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Rhode Island, Vermont, and Wisconsin is also vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Naval Hospital, Great Lakes, IL 60088, Tele: (A) 792-3950, (C) 312-688-3950.

(C) Responsibility for medical matters for the States of Connecticut and New York is vested in: Commanding Officer, Office of Medical Affairs, Naval Station, 207 Flushing Avenue, Brooklyn, NY 11251, Tele: (A) 456-2716, 2343, or 2612, (C) 212-834-2716, 2343, or 2612.

(D) Responsibility for medical matter for the States of Delaware, New Jersey, Ohio, and Pennsylvania is vested: Commanding Officer, Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145, Attn: Office of Medical Affairs, Tele: (A) 443-8236, (C) 215-755-8236.

(ii) *National Capital Region.* For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A) 295-5322, (C) 301-295-5322.

(iii) *Mid-Atlantic Region.* For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A) 565-1074 and 1075, (C) 804-445-1074 and 1075.

(iv) *Southeast Region.* For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer Naval Medical Clinic, Code 01A, New Orleans, LA 70146, Tele: (A) 485-2406, 2407, and 2408, (C) 504-361-2406, 2407, and 2408.

(v) *Southwest Region.* For the States of Arizona, Nevada, and New Mexico, the counties of Kern, San Bernadino, San Luis Obispo, Santa Barbara, and all other California counties south thereof, medical and dental responsibilities are vested in: Commander, Naval Medical Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134, Tele: (A) 987-2611, (C) 619-233-2611.

(vi) *Northwest Region.* The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and the counties of Inyo, Kings, Tulare, and all other counties of California north thereof are served by 2 OMAs:

(A) Responsibility for medical and dental matters for the States of Colorado, Kansas, and Utah, and the California counties of Inyo, Kings, Tulare and all other counties of California north thereof is vested in: Commanding Officer, Naval Hospital, Oakland, CA 94627, Attn: Office of Medical Affairs, Tele: (A) 855-5705, (C) 415-633-5705.

(B) Responsibility for medical and dental matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA

98115, Attn: Office of Medical/Dental Affairs, Tele: (A) 941-3823, (C) 206-526-3823.

(2) *Outside the Contiguous 48 United States, Except Alaska.* In all areas outside the contiguous 48 United States except Alaska, the following activities have been vested with responsibility for approval or disapproval of medical and dental care claims and requests for care:

(i) Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

(ii) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652, for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal, Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

(iii) Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765, for care rendered in Japan, Korea, and Okinawa.

(iv) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96630, for care rendered in New Zealand and Guam.

(v) Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96680, for care rendered in Australia.

(vi) Commanding Officer, U.S. Naval Air Station, FPO New York 09560, for care rendered in Bermuda.

(vii) Commander, U.S. Naval Forces, Southern Command, FPO Miami 34059, for care rendered in Central and South America.

(viii) Commanding Officer, U.S. Naval Hospital, FPO Miami 34051, for medical care and Commanding Officer, U.S. Naval Regional Dental Center, FPO Miami 34051, for dental care rendered in Puerto Rico, Virgin Islands, and other Caribbean Islands.

(ix) Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for medical care and Commanding Officer, Naval Regional Dental Center, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

(x) The OMA for either the Southeast Region, § 732.18(f)(1)(iv), or the Southwest Region, § 732.18(f)(1)(v) for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372 (MEDCOM-333).

(xi) Commander, Naval Medical Command, Washington, DC 20372 (MEDCOM-333):

(A) For inpatient and outpatient care of active duty Navy and Marine Corps members in Canada.

(B) For outpatient care rendered to NATO active duty personnel in accordance with the Assistant Secretary of Defense (Comptroller) memo of 12 March 1981, Reimbursement for inpatient medical care provided foreign military and diplomatic personnel or their dependents in military hospitals in the United States.

(C) In unusual circumstances requiring Departmental level review prior to approval, adjudication, or payment.

(xii) Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command enumerated in § 732.18(f)(1)(i) through 732.18(f)(2)(x). This is a local policy decision to enhance the maintenance of good public relations.

(xiii) The commanding officer authorizing the care in geographical areas not specifically delineated in § 732.18(f)(1)(i) through 732.18(f)(2)(ix).

(xiv) The appropriate command enumerated in § 732.18(f)(2)(i) through 732.18(f)(2)(x) for care rendered aboard commercial vessels en route to a location within any of the geographical areas enumerated in those subparts.

(g) *Standard document number.* (1) To enhance accountability procedures and facilitate identification of documents in the accounting and disbursement process, each NAVMED 6320/10 approved for payment shall be assigned a unique 15 position alpha/numeric standard document number composed in accordance with the following example: N0016883MD00025.

1	2 thru 6	7 & 8	9 & 10	11 thru 15
N	00168	83	MD	00025

Position	Data entry
1	"N" identifies Navy.
2 thru 6	Unit Identification Code of document issuing activity.
7 and 8	Last two digits of the fiscal year in which the basic document was issued.
9 and 10	"MD" is the document type code identifying this as a Miscellaneous Financial Document.
11 thru 15	Serial Number (In the example, "00025" identifies the 25th miscellaneous document prepared in fiscal year 83 by the activity.)

(2) This standard document number shall be prominently displayed on the NAVCOMPT Form 2160, Public Voucher for Medical Services, and on all other accompanying documentation of the claim. Diligent use of this number facilitates the establishment of an auditing trail and thus reduces opportunities for fraud.

§ 732.19 Medical board.

When the adjudication process uncovers conditions which may be chronic or otherwise potentially disabling, a determination shall be made by OMAs (in conjunction with appropriate clinical specialists) as to the need for a medical board. MANMED, chapter 18 and the Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM-25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to): (1) Peptic ulcer disease, (2) asthma, (3) hypertension, (4) arthritis, (5) alcoholism, (6) diabetes, (7) psychriatric conditions, (8) gout, (9) heart disease, and (10) allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the OMA with the concurrence of an appropriate naval clinical specialist and regional commander.

§ 732.20 Recovery of medical care payments.

Evidence of payments shall be submitted to the action JAG designee in accordance with JAG manual, chapter 24, in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workmen's compensation, no-fault insurance, or under medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 shall be completed whenever benefits are received in connection with a vehicle accident. OMAs and the ODA shall return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) shall be completed and submitted by OMAs and the ODA with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care shall show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member shall be asked to sign his or her name beneath the statement.

(c) In States with no-fault insurance laws, the procedures outlined in § 732.18(e)(3) shall also be followed.

§ 732.21 Collection for subsistence.

(a) *General.* Each OMA shall initiate subsistence collection action for enlisted personnel upon receipt of a bill for inpatient care from nonnaval facilities or under circumstances described in § 732.21(c)(3). OMAs shall also ensure that pay adjustment action has been initiated by the member's command, as appropriate. Commands submitting claims to OMAs without a locally prepared pay checkage form or a DD 139 shall be requested to provide a copy. If the claim is otherwise payable, payment action shall be held in abeyance pending receipt of the form.

(b) *Officers.* The accounts of officers (Navy and Marine Corps) receiving treatment in Veterans Administration facilities, the Canal Zone Hospital, or in civilian hospitals at the Department of the Navy's expense are required to be checked for subsistence. Collection action is initiated by completion and submission of a DD Form 139, Pay Adjustment Authorization, by the officer's commanding officer or the Pay/Personnel Administrative Support System (PASS) office to the disbursing officer having custody of the member's pay record. The Pay/Personnel Administrative Support System office is responsible for ensuring that checkage has been accomplished in accordance with DOD Military Pay and Allowances Entitlements Manual 30137. When officers are hospitalized in an Army, Air Force, or designated USTF, the charge for subsistence will be collected by the facility.

(c) *Enlisted Members.* (1) The passage of the Defense Officer Personnel Management Act (DOPMA) placed a requirement on the uniformed services to collect subsistence from hospitalized enlisted personnel. To accomplish collection, it is necessary establish a pay checkage system similar to that described in § 732.21(b) for officers. Generally, the DD Form 139 can be used for this purpose; however, the Medical Department representative (or other appropriate individual) who completes or assists in the preparation of the NAVMED 6320/10 may attach thereto a locally prepared statement in the following format before submission of the claim to the OMA:

(i) Name, rate, and social security number of the hospitalized member.

(ii) Inclusive dates of hospitalization.

(iii) "NAVMEDCOM 00018", COMNAVMEDCOM's Unit Identification Code (UIC), as the organization providing meals.

(iv) Date forwarded to disbursing office.

(2) The pay checkage form shall be forwarded to the disbursing officer (DO) or Personnel Support Detachment (PSD) holding the member's pay record. Copies shall be provided COMNAVMEDCOM (MEDCOM-112) and shall accompany each inpatient claim submitted to an OMA.

§ 732.22 Appeal of denied claims.

When a claim for care under this part is initially denied, the member shall be advised of the appeal procedure in the denial letter specified in § 732.18(c)(5). Responses at all levels shall be prompt and courteous. The appeal procedure consists of three levels:

(a) Reconsideration by the OMA or ODA making the initial denial. The member should submit any additional information that may mitigate the initial denial.

(b) Consideration by the commander of the regional medical command having cognizance over the OMA or ODA which upheld the initial denial on reconsideration.

(c) The third level is consideration by COMNAVMEDCOM (MEDCOM-333).

§ 732.23 Records.

The NAVMED 6320/10 or a copy of the Public Voucher for Medical Services (NAVCOMPT Form 2160) or other paid voucher and the Accounting Card (NAVCOMPT Form 632) containing the accounting classification and cost code information received from Navy finance centers, provide all the management information needed by COMNAVMEDCOM under normal circumstances. Except for the monthly letter report required in § 732.12(a)(2), no other records need be forwarded to COMNAVMEDCOM by approving authorities except, when in the judgment of the approving officer, copies of correspondence or other pertinent documents of a controversial nature might assist in improving administration of the program.

PART 733—ASSISTANCE TO AND SUPPORT OF DEPENDENTS; PATERNITY COMPLAINTS

Sec.

733.1 Rates of basic allowance for quarters.
733.2 Delegations.
733.3 Information and policy on support of dependents.

Sec.
733.4 Complaints of nonsupport and insufficient support of dependents.
733.5 Determination of paternity and support of illegitimate children.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 37 U.S.C. 101, 401, 403; 50 U.S.C. App. 2210; E.O. 11157, 29 FR 7973, 3 CFR 1964 Supp. p. 139, as amended.

SOURCE: 44 FR 42190, July 19, 1979, unless otherwise noted.

§ 733.1 Rates of basic allowance for quarters.

(a) Except as otherwise provided by law, a member of the naval service entitled to basic pay is entitled to a basic allowance for quarters at the monthly rates according to the pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term "dependent" with respect to a member of the naval service, as used in this part, means:

(1) His or her spouse;

(2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member) who either:

(i) Is under 21 years of age; or

(ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

(i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or

(ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of is or her support.

The relationship between a stepparent and his or her stepchild is terminated by the stepparent's divorce from the parent by blood.

§ 733.2 Delegations.

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, D.C. 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for basic allowance for quarters, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.

§ 733.3 Information and policy on support of dependents.

(a) *Policy*—(1) *General.* The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) *Adequacy of support.* Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth below are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(i) Number of dependents and amount of support to be provided in the absence of a mutual agreement or court order:

(A) Navy members:

Relationship and number of dependents	Support to be provided (gross pay)
Spouse only	⅓
Spouse and one minor child	½
Spouse and two or more children	⅗
One minor child	⅙
Two minor children	¼
Three minor children	⅓

For purposes of this support guide, gross pay will include basic pay and basic allowance for quarters, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(B) *Marine Corps members.* If the question of support is in dispute, the following will be used as a guide for support:

For spouse only—BAQ plus 20% of basic pay.
For spouse and one minor child—BAQ plus 25% of basic pay.
For spouse and two or more minor children—BAQ plus 30% of basic pay.
For one child—⅙ of basic pay.
For two minor children—¼ of basic pay.
For three or more minor children—⅓ of basic pay.

(*1*) The amount of support to a dependent for whom basic allowance for quarters is claimed should not be less than the applicable rate of basic allowance for quarters to which the member is entitled.

(*2*) A Marine's obligation to provide for the support of children by a former marriage has as high a priority as an obligation to provide for a present wife and family. In those cases of a legitimate financial inability to provide support for all dependents, commanders shall attempt to assist the Marine in the equitable distribution of income for the assistance of all dependents, utilizing the guidelines set forth above.

(*3*) It is to be emphasized that the guidelines set forth are to be used only as an interim measure, and that the commander's decision as to the quantum of support to be provided will be, prima facie, the appropriate conclusion of the Marine Corps, pending civil court or extrajudicial resolution among the involved parties.

(3) *Support of a lawful wife.* The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Comman-

dant of the Marine Corps, as appropriate.

(4) *Payments of alimony.* Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) *Support of children.* The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the marriage through divorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) *Adopted children.* The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) *Entitlement to basic allowance for quarters.* Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Alowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) *Application of the rule based on Robey v. United States 71 Ct. Cl. 561.* Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

(i) The full amount of his/her basic allowance for quarters, or

(ii) An amount specified in a court order or legal separation agreement, or

(iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

§ 733.4 Complaints of nonsupport and insufficient support of dependents.

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in § 733.3 will apply. The member will be informed that his/her Navy or Marine Corps career may be in jeopardy if he/she does not take satisfactory action. The member may become ineligible to reenlist or extend enlistment (in the case of enlisted members), and may be subject to administrative or disciplinary action that may result in separation from the Navy or Marine Corps.

(1) *Waiver of support of spouse.* If the member feels that he or she has legitimate grounds for a waiver of support for the spouse, the Director, Navy Family Allowance Activity, acting under the policy guidance of the Chief of Naval Personnel or the Commandant of the Marine Corps (Code MSPA), may grant such a waiver for support of a spouse (but not children) on the basis of evidence of desertion without cause or infidelity on the part of the spouse. The evidence may consist of—

(i) An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of heresay, opinion, and conclusion are not acceptable as evidence.

(ii) Written admissions by the spouse contained in letters written by that spouse to the service member or other persons.

The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps (Code MSPA) with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) *Action.* After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

§ 733.5 Determination of paternity and support of illegitimate children.

(a) *Illegitimate children.* If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) *Judicial order or decree of paternity or support.* Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. However, no basic allowance for quarters will be included in using the guide unless basic allowance for quarters is payable in behalf of illegitimate children. If the member refuses to comply with the terms of the court order, administrative action will be taken as indicated in § 733.4.

(1) *Court of competent jurisdiction.* A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or personal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.

(c) *Nonjudicial determination.* In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) *Members not on active duty.* Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) *Former members.* (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or the Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.

PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

Sec.
734.1 Purpose.
734.2 Scope.
734.3 Service of process.
734.4 Responsibilities.
734.5 Administrative procedures.

AUTHORITY: 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

SOURCE: 44 FR 42193, July 19, 1979, unless otherwise noted.

§ 734.1 Purpose.

This part prescribes responsibilities and procedures applicable in the Department of the Navy when processsing and honoring legal process brought for the enforcement of legal obligations to provide child support or make alimony payments under 42 U.S.C. 659 (Social Security Act, section 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157).

§ 734.2 Scope.

The provisions of this part shall apply to legal process affecting any Federal pay administered by the Department of the Navy and due and payable to all categories of naval military or civilian personnel including personnel of Navy or Marine Corps nonappropriated-fund activities. This part is not applicable to legal process affecting entitlements administered by other agencies, such as civilian employees' retirement benefits administered by the Office of Personnel Management or compensation administered by the Veterans Administration.

[44 FR 42193, July 19, 1979, as amended at 47 FR 28371, June 30, 1982]

§ 734.3 Service of process.

(a) It is the policy of the Department of the Navy to respond promptly to legal process addressed to naval officials. Service of legal process affecting the pay of Department of the Navy personnel shall be made on the following designated officials in the manner and in the circumstances specified below:

(1) *Navy members.* Process affecting the military pay of active duty, Reserve, Fleet Reserve, or retired Navy members, wherever serving or residing, may be served personnally or by registered or certified mail, return receipt requested, on the Director, Navy Family Allowance Activity, Anthony J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

(2) *Marine Corps members.* Process affecting the military pay of active-duty, Reserve, Fleet Marine Corps Reserve, or retired Marine Corps members, wherever serving or residing, may be served personally or by registered or certified mail, return receipt requested, on the Commanding Officer, Marine Corps Finance Center (AA), Kansas City, Missouri 64197.

(3) *Civilian Employees.* Process affecting the pay of active civilian employees of the Department of the Navy:

(i) If currently employed at Navy or Marine Corps activities (including nonappropriated-fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served personally, or by registered or certified mail, return receipt requested, on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be served personally or by registered or certified mail, return receipt requested, in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on the Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, D.C. 20390.

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated-fund instrumentalities administered by the Navy Resale System Office, such process may be served on the Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn, New York 11232.

(C) If pertaining to non-civil service civilian personnel of Navy clubs, messes, or recreational facilities (nonappropriated funds), such process may be served on the Chief of Naval Personnel, Director, Recreational Services Division (Pers/NMPC-72), Washington, D.C. 20370.

(D) If pertaining to non-civil service civilian personnel of other nonappropriated-fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(E) If pertaining to non-civil service civilian personnel of any Marine Corps nonappropriated-fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

(b) The Department of the Navy officials designated above are authorized to accept service of process within the purview of 42 U.S.C. 659 (Social Security Act, sec. 459 added by Pub. L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended by the Tax Reform and Simplification Act of 1977, Pub. L. 95-30, title V, sec. 502, 91 Stat. 157). Where service of process is offered to an official not authorized to accept it under paragraph (a) of this section, the person offering such service shall be referred to the appropriate official designated in paragraph (a) of this section.

§ 734.4 Responsibilities.

(a) *Designated officials.* Within their respective areas of cognizance as set forth in § 734.3, the designated officials are responsible for the following functions with regard to legal process:

(1) Sending such notifications and directions to the member concerned and his or her commanding officer as may be required.

(2) Obtaining or providing an appropriate review by qualified legal counsel.

(3) Taking or directing actions, temporary and final, as are necessary to comply with 42 U.S.C. 659, as amended (*see* § 734.3(b)), the Marine Corps Manual, Navy Comptroller Manual, and the court's order in the case, and

(4) Apprising the cognizant United States Attorney of the Department of the Navy's disposition, as required, and, in coordination with the Judge Advocate General, effecting liaison with the Department of Justice or United States Attorneys in instances of noncompliance with process or other circumstances requiring such action.

(b) *Command responsibility.* (1) The Commanding officer of the member or employee concerned shall, upon receipt of notification from the appropriate designated official, ensure that the member or employee has received written notification of the pendency of the action and that the member or employee is afforded counseling concerning his or her obligations in the matter, and legal assistance if applicable, in dealing with the legal action to affect his or her Federal pay. The commanding officer shall comply with the directions of the designated official in responding to the legal process.

(2) For the purposes of this part, the Director, Navy Family Allowance Activity, Cleveland, Ohio, will function as the commanding officer with regard to retired Navy military personnel and members of the Fleet Reserve.

(c) *Legal services.* The Judge Advocate General is responsible for the following functions pertaining to legal process within the purview of this part:

(1) Providing overall technical direction and guidance, as required, for all Department of the Navy military and civilian attorneys engaged in reviewing such process or advising on its disposition.

(2) Ensuring, as Director, Naval Legal Sevice, the availability of attorneys in Naval Legal Service Offices who are qualified to advise and assist the designated officials concerning the disposition of legal process, and

(3) Where required, ensuring effective liaison with the Department of Justice or United States Attorneys.

§ 734.5 Administrative procedures.

The designated officials specified in § 734.3, shall, in consultation with the Judge Advocate General and Commander, Navy Accounting and Finance Center or the Commandant of the Marine Corps (FD), as appropriate, establish procedures for effectively executing their assigned responsibilities. Implementing procedures shall conform with 42 U.S.C., 659, as amended, the Marine Corps manual, the Navy Comptroller Manual, and the Federal Personnel Manual.

PART 735—REPORTING BIRTHS AND DEATHS IN COOPERATION WITH OTHER AGENCIES

Sec.
735.1 Purpose.
735.2 Background.
735.3 Action.

AUTHORITY: 70A Stat. 278; 80 Stat. 379, 383; 5 U.S.C. 301, 552; and 10 U.S.C. 5031.

SOURCE: 51 FR 15321, Apr. 23, 1986, unless otherwise noted.

§ 735.1 Purpose.

To promulgate latest guidance on reporting births and deaths, including births to which Part 138 of this title is applicable.

§ 735.2 Background.

For Armed Forces members and their dependents on duty overseas, registration of vital statistics with an appropriate foreign government may be a distinct advantage should documentary evidence, acceptable in all courts, be required at any future time. Department of Defense (DOD) policy is that military services will require their members to make official record of births, deaths, marriages, etc., with local civil authorities in whose jurisdiction such events occur.

§ 735.3 Action.

When a medical officer has knowledge of a birth or death occurring under the following conditions, he or she shall refer the matter to the commanding officer for assurance of compliance with DOD policy.

(a) *Births.* (1) In accordance with local health laws and regulations, the commanding officer of a naval hospital in the United States (U.S.) shall report to proper civil authorities all births, including stillbirths, occurring at the hospital. Medical officers on ships and aircraft operating within U.S. political boundaries, or at stations other than naval hospitals in the U.S., shall report all births occurring within their professional cognizance. It shall be the duty of the medical officer to determine the requirements of local civil authorities for these reports.

(2) When births occur on aircraft or ships operating beyond U.S. political boundaries, the medical officer responsible for delivery shall make a report to the commanding officer, master of the ship, or to the officer in command of any aircraft, in every case to be recorded in the ship or aircraft log. A report shall also be made to local civil authorities in the first port of entry if required by law and regulation of such authorities when births occur on a course inbound to the U.S. Additionally, the medical officer shall:

(i) Furnish the parents with appropriate certificates and shall, if the report is not accepted by the local registrar of vital statistics or other civil authority, or in any case in which local authority has indicated in writing that such a report will not be accepted,

(ii) Advise the parents to seek the advice of the nearest office of the U.S. Immigration and Naturalization Service (USINS), at the earliest practicable time. USINS offices are located in ports of entry and in major cities of the United States.

(iii) For births occurring on courses out-bound and beyond the continental limits of the U.S., report to the U.S. consular representative at the next appropriate foreign port. When the aircraft or ship does not enter a foreign port, procedures described in § 735.3(a)(2)(ii) shall be followed.

(3) Attention is invited to the fact that reports of birth may be forwarded to the Bureau of Health Statistics, Department of Health, Honolulu, Hawaii for any births occurring on courses destined for islands in the Pacific Ocean over which the United States has jurisdiction as well as for

those births which are otherwise accepted by civil authorities for Hawaii.

(4) Part 138 of this title prescribes policy, responsibilities, and procedures on birth registration of infants born to U.S. citizens, in military medical facilities outside the United States and its possessions.

(b) *Deaths.* When a death occurs at a naval activity in any State, Territory, or insular possession of the United States, the commanding officer or designated representative shall report the death promptly to proper civil authorities in accordance with Naval Medical Command directives. If requested by these civil authorities, the civil death certificate may be prepared and signed by the cognizant naval medical officer. Local agreements concerning reporting and preparation of death certificates should be made between the naval facility and local civil authorities.

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

Cross Reference: For joint procurement regulations of the Armed Forces, see Chapter I of this title.

PART 736—DISPOSITION OF PROPERTY

Sec.

736.1 General.
736.2 Dispositions under contracts.
736.3 Sale of personal property.
736.4 Disposition of real property.
736.5 Disposition of real and personal property under special statutory authority.
736.6 Certification prior to disposition.
736.7 Approval by the Attorney General.

Authority: Secs. 5031, 6011, 70A Stat. 278, as amended; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 3618, 3678, 3709, 38 Stat. 1084, 44 Stat. 605, 49 Stat. 885, 53 Stat. 811, 54 Stat. 396, 57 Stat. 380, 59 Stat. 260, sec. 27, 60 Stat. 856, sec. 5, 60 Stat. 998, sec. 4, 62 Stat. 286, secs. 7(c), 8(a-b), 62 Stat. 452, 63 Stat. 377, 64 Stat. 1109, 65 Stat. 645, 68 Stat. 832, sec. 501(c)(3), 68A Stat. 163, secs. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 70A Stat. 141, sec. 5003, 72 Stat. 1252, 72 Stat. 1793, sec. 616, 73 Stat. 381, as amended; 31 U.S.C. 487, 628, 41 U.S.C. 5, 31 U.S.C. 686, 686a, 40 U.S.C. 304a, 50 U.S.C. 98-98h, 22 U.S.C. 521, 44 U.S.C. 366-380, 42 U.S.C. 1572, 24 U.S.C. 37, 20 U.S.C. 77d, 15 U.S.C. 328, 49 U.S.C. 1156(c), 1157(a-b), 40 U.S.C. 471 et seq., 42 U.S.C. 1855-1855g, 22 U.S.C. 1611-1613c, 1750 et seq., 26 U.S.C. 501(c)(3), 10 U.S.C. 2481, 2541, 2542, 2571-2574, 2662, 2667, 6155, 6156, 6901, 7227, 7228, 7230, 7304-7308, 7541-7547, 7601-7604, 38 U.S.C. 5003, 42 U.S.C. 1891-1893, 40 U.S.C. 483a. E.O. 10885, 25 FR 8471.

Source: 25 FR 4674, May 27, 1960, unless otherwise noted.

§ 736.1 General.

Real and personal property under the jurisdiction of the Department of the Navy, exclusive of battleships, aircraft carriers, cruisers, destroyers, and submarines (referred to as warships in this part) and certain public domain lands and mineral interests, may be disposed of under the authority contained in the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (40 U.S.C. 471), in this part referred to as the Federal Property Act. The Federal Property Act places the responsibility for the disposition of excess and surplus property located in the United States, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands with the Administrator of General Services, and for disposition of such property located in foreign areas, with the head of each executive agency. The Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 of January 21, 1974, (39 FR 2577) provide authority for the disposal of warships as well as other vessels stricken from the Naval Vessel Register. The United States Maritime Commission, however, is authorized to dispose of surplus vessels, other than warships, or 1,500 gross tons or more which the Commission determines to be merchant vessels or capable of conversion to merchant use (40 U.S.C. 484(i)). Accordingly, in disposing of its property, the Department of the Navy is subject to applicable regulations of the Administrator of General Services and the Secretary of Defense, and, in regard to potential merchant vessels other than warships, to determinations of the United States Maritime Commission. In general, property of the Department of the Navy, which becomes excess to its needs, may not be disposed of to the general public until it has been determined to be surplus after screening such property with the other military departments of the Department of Defense and all other agencies of the Government, and after it has been offered for donation to the educational institutions.

(a) Within the limitations indicated in the introductory paragraph of this section, the Department of the Navy is authorized to sell its surplus personal property under the authority of the Federal Property Act and the Act of August 10, 1956 (70A Stat. 451; 10 U.S.C. 7305), and to report its real property, when excess to the needs of the Department of Defense, to the

General Services Administration for ultimate disposition by that agency or the Department of the Navy. The Department of the Navy is also authorized to transfer real and personal property to other departments or agencies of the Government, and to sell, transfer and otherwise dispose of certain vessels and other personal property under special statutory authority. Ships other than warships are sold pursuant to the Federal Property Act (40 U.S.C. 484(i)) by the U.S. Maritime Commission if over 1500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. In certain cases, Navy vessels and other property may be transferred or otherwise made available to other agencies without reimbursement (sec. 616, 73 Stat. 381; 40 U.S.C. 483a).

(b) This part sets forth the general procedures and authority with respect to the disposition of property under the control of the Department of the Navy except disposition of property to foreign governments under the authority of such statutes as the Aid to American Republics Act (54 Stat. 396; 22 U.S.C. 521) and the Mutual Defense Assistance Control Act of 1951 (65 Stat. 644; 22 U.S.C. 1611-1613c).

(c) The Department of Defense Disposal Manual and directives issued by the Department of the Navy cover the disposition of all property of the Department including disposition under the Federal Property Act. The Navy Personnel Property Disposal Manual and the Marine Corps Supply Manual contain information and operating instructions for the guidance of field personnel in disposing of personal property at Navy and Marine Corps installations, respectively. Section XXIV of Navy Procurement Directives contains similar information applicable to the disposition of contractor inventory. These publications are available for inspection at the Naval Material Command Headquarters, Washington, D.C.; at the offices of the Commandants of the several Naval Districts; and at various Navy and Marine Corps installations.

[25 FR 4674, May 27, 1960, as amended at 39 FR 18442, May 28, 1974; 41 FR 26008, June 24, 1976]

§ 736.2 Dispositions under contracts.

(a) Contractor inventory (that is, personal property acquired by a contractor under terms vesting title in the Government but in excess of the amount required for performance of a contract) may be sold to the contractor or otherwise disposed of in accordance with the terms and conditions set forth in the contract and applicable Navy instructions. See also Parts 8 and 13 and §§ 30.2 and 30.3 of this title.

(b) Industrial and plant equipment provided by the Government to a contractor for the performance of a contract may, subject to applicable statutory authority and Navy instructions be disposed of in accordance with the applicable contract terms and conditions.

(c) Transfer to nonprofit education or research institutions of title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research is authorized by the act of September 6, 1958 (sec. 2, 72 Stat. 1793; 42 U.S.C. 1892) and implementing regulations (§§ 13.800 to 13.803 of this title).

§ 736.3 Sale of personal property.

(a) The sale of personal property determined to be surplus or foreign excess or for exchange purposes is authorized by the Federal Property Act and regulations of the Administrator of General Services (see § 736.1(a)). Certain vessels stricken from the Naval Vessel Register may be sold under the act of August 19, 1956, (70A Stat. 451, 10 U.S.C. 7305).

(b) Sales are by sealed bid, auction, spot bid or, under limited conditions prescribed by law, negotiated method. A deposit, generally 20 percent of the amount bid, is normally required of each bidder. Awards are usually made to the highest acceptable bidder. Normally property may not be removed from Government control until full payment is made. Arrangements must be made by the successful bidder to remove the property within the time limit prescribed in the invitation to bid or sales contract. The Government reserves the right to withdraw any property from sale when in the best interest of the Government.

(1) The Department of Defense has a contact point for any person interested in purchasing surplus Department of Defense personal property within the United States. The contact point is the Defense Surplus Bidders Control Office, Defense Logistics Service Center, Federal Center Building, Battle Creek, Michigan. This office maintains a single bidders list for all military departments. The list is arranged to show each person's buying interests, both geographically and with respect to categories of property. The categories of property (together with an application blank) are listed in a pamplet "How to Buy Surplus Personal Property From The Department of Defense," prepared by the Defense Logistics Services Center, Defense Supply Agency, Battle Creek, Michigan.

(2) Retail sales at fixed prices based on the current market value are conducted by certain Defense property disposal offices.

[39 FR 18442, May 28, 1974]

§ 736.4 Disposition of real property.

(a) Real property, including related personal property, determined to be excess to the needs of the Department of Defense is subject to disposition under the Federal Property Act. In the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense and not required for the needs and the discharge of the responsibilities of all Federal agencies, is generally disposed of by the General Services Administration as surplus property. Exceptions, however, are property worth less than $1,000; certain leases, permits, licenses, easements or similar interests; certain fixtures, structures, and improvements; and other special classes of property which, when determined to be surplus, are disposed of by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers under authority delegated in Title II, Regulations of the General Services Administration, or under special delegations from the Administrator of General Services.

(b) Outside the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, Department of the Navy real property determined to be excess to the Department of Defense is disposed of directly by the Commander, Naval Facilities Engineering Command, Field Division Directors, and District or Area Public Works Officers.

(5 U.S.C. 301, 40 U.S.C. 471-514)

[35 FR 10008, June 18, 1970, as amended at 41 FR 26008, June 24, 1976]

§ 736.5 Disposition of real and personal property under special statutory authority.

In addition to the authority to sell personal property to the general public and to transfer real property to the General Services Administration under the provisions of §§ 736.3 and 736.4, the Department of the Navy has further authority to dispose of personal and real property as described in paragraphs (a) through (h) of this section.

(a) *Disposition to other Government agencies.* The Department of the Navy is authorized to transfer real and personal property to other governmental departments or agencies under statutes applicable to particular agencies, the act of March 4, 1915 (38 Stat. 1084) as amended (31 U.S.C. 686) and, as to certain personal property, under directives of the General Services Administration.

(b) *Leases.* Real and personal property under the control of the Department of the Navy not excess to its needs and not for the time being required for public use may be leased, when the Secretary of the Navy shall deem it to be advantageous to the Government, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Such leases shall be for a period of not exceeding five years unless the Secretary determines that a longer period will promote the national defense or will be in the public interest. Such leases are authorized by the act of August 10, 1956 (70A Stat. 150; 10 U.S.C. 2667). Leases of Government-owned real property where the estimated annual rental is more than 50,000 must be deferred for 30 days after reporting the proposed transaction to the Armed Services Committees of Congress in accordance with the act of August 10, 1956 70A Stat. 147), as amended (10 U.S.C. 2662).

(c) *Disposition of strategic materials.* Strategic materials may be disposed of by the Department of the Navy under the authority described in § 736.3 only when such property is excess to the needs of the Department of Defense and when the Director of the Office of Civil and Defense Mobilization (acting through the Defense Materials Service of the General Services Administration) determines that the amounts of such materials to be disposed of are so small as to make transfer thereof under the act of June 7, 1939 (53 Stat. 811) as amended (50 U.S.C. 98-98h) economically impractical, or such materials are not necessary for stockpile requirements determined in accordance with section 2 of said act.

(d) *Disposition of vessels.* Vessels stricken from the Naval Vessel Register may be sold by the Department of the Navy under the authority and subject to the limitations of the Federal Property Act (sections 203(i), 63 Stat. 386, 40 U.S.C. 484(i)) and the act of August 10, 1956, (70A Stat. 451; 10 U.S.C. 7304, 7305, 7307) and Executive Order 11765 (39 FR 2577). However, pursuant to section 203(i) of the Federal Property Act (40 U.S.C. 484(i)), the United States Maritime Commission disposes of vessels, other than warships, if over 1,500 gross tons and determined by the Maritime Commission to be merchant vessels or capable of conversion to merchant use. Vessels may be sold for scrapping or for use under such authority or, if such sale is not feasible, the Naval Ship Systems Command may arrange for the demolition of a vessel and sale of the resulting materials by an authorized selling activity as set forth in § 736.3.

(e) *Exchange of sale of property for replacement purposes.* Under the authority of section 201(c) of the Federal Property Act (40 U.S.C. 481(c)) and of the Armed Services Procurement Regulation, the Department of the Navy is authorized in the procurement of new equipment, to exchange or sell similar items which are not excess to its needs, and apply the exchange allowance or proceeds of sale in whole or part payment for the items procured.

(f) *Donations and loans of personal property.* (1) Certain personal property of the Department of the Navy, including vessels, which become surplus, may be donated or loaned under the authority contained in the Federal Property Act and the act of August 10, 1956 (70A Stat. 453; 10 U.S.C. 2572, 7308, 7545) to:

(i) Schools such as maritime academies or military, naval, Air Force or Coast Guard preparatory schools, designated by the Secretary of Defense as educational activities of special interest to the armed services.

(ii) Accredited schools, colleges and universities and educational institutions which have been exempted from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 and State Departments of Education for use by tax exempt educational institutions. Applications for donation shall be approved by the Department of Health and Human Services and the Administrator of General Services and may be filed with the field representative of the Department of Health and Human Services located nearest the applicant.

(iii) States, Territories, Commonwealths, or possessions of the United States and political subdivisions, municipal corporations, veterans associations, soldiers' monument associations, State museums, and non-profit educational museums, subject in certain cases to the approval of the Curator for the Navy and to objection by a concurrent resolution of the Congress.

(2) Applications other than those to be filed with the field representative of the Department of Health and Human Services shall be filed with the Department of the Navy and referred to the cognizant Command or Headquarters for action except that appli-

cations for vessels and district craft shall be referred to the Chief of Naval Operations, applications for boats to the Naval Ship Systems Command, and applications for barges, floating drydocks, and other floating construction equipment to the Naval Facilities Engineering Command. Detailed instructions with respect to such applications are set forth in the Defense Disposal Manual.

(g) *Disposition of equipment for research.* Under the act of September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891-1893), equipment purchased with research grant or contract funds may be transferred for the conduct of basic or applied scientific research to (1) non-profit institutions of higher education or (2) non-profit organizations whose primary purpose is the conduct of scientific research. An annual report of such transfers must be made to the appropriate Committees of Congress.

(h) *Assistance in major disaster relief.* Under the act of December 31, 1970, (42 U.S.C. 4401-4485) and subject to directions of the Director of the Office of Emergency Preparedness, certain excess personal property may be utilized for or donated to States and local governments for relief of suffering and damage resulting from major disasters. Surplus property may also be disposed of to States for sale to small business concerns affected by specific disasters such as hurricanes.

[25 FR 4674, May 27, 1960, as amended at 25 FR 11066, Nov. 22, 1960, 26 FR 12158, Dec. 20, 1961; 35 FR 10008, June 18, 1970; 39 FR 18442, May 28, 1974, 41 FR 26008, June 24, 1976; 47 FR 28371, June 30, 1982]

§ 736.6 Certification prior to disposition.

The transfer, sale, or other disposition of a battleship, aircraft carrier, cruiser, destroyer, or submarine shall not be made unless and until the Chief of Naval Operations, in accordance with the act of August 10, 1956 (70A Stat. 452; 10 U.S.C. 7307), has certified that such material is not essential to the defense of the United States.

§ 736.7 Approval by the Attorney General.

Prior to the disposition, either competitively or by negotiation, to private interests of a plant or plants, or other property, which cost the Government $1,000,000 or more if real property, or $3,000,000 or more if personal property (other than a patent, process, technique or invention), or of patents, processes, techniques or inventions, irrespective of cost, the Department of the Navy must notify the Attorney General of the proposed disposal and the probable terms and conditions thereof. Within a reasonable time, in no event to exceed sixty days after receiving such notification, the Attorney General will advise the Department of the Navy, whether, insofar as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. In such cases, the Department of the Navy must obtain from the proposed purchaser information regarding its financial status, the anticipated use to be made of the property and any other information as may be required by the Attorney General; the award or final sale must be delayed until the Attorney General advises of his determination.

PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

Sec.
744.1 Purpose.
744.6 Authorization for release without consent of the owner.

AUTHORITY: Sec. 301, 80 Stat. 379, secs. 5031, 6011, 70A Stat. 278, 375 as amended; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply the Mutual Security Act of 1954 (68 Stat. 832) as amended, 22 U.S.C. 1750 et seq., and Act of Sept. 4, 1961 (Pub. L. 87-195, 75 Stat. 424), 22 U.S.C. 2151-2406 (2351, 2356).

§ 744.1 Purpose.

This part implements Part 264 of this title and the Technical Property Interchange Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

[26 FR 12217, Dec. 21, 1961]

§ 744.6 Authorization for release without consent of the owner.

(a) Military equipment including the information essential for its operation, maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with § 264.4(d)(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

(b) Where any technical information is released in accordance with this section, such release shall be subject to the conditions of release set forth in § 264.4(f).

(c) Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with § 264.4(d)(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

[24 FR 10715, Dec. 25, 1959, as amended at 44 FR 30686, May 29, 1979]

PART 746—LICENSING OF GOVERNMENT INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE NAVY

Sec.

746.1 Purpose.
746.2 Policy
746.3 Delegation of authority.
746.4 Definitions.
746.5 Government inventions available for licensing.
746.6 Nonexclusive license.
746.7 Limited exclusive license.
746.8 Additional licenses.
746.9 Royalties.
746.10 Reports.
746.11 Procedures.
746.12 Litigation
746.13 Transfer of custody of Government inventions.

Authority: 5 U.S.C. 301; 10 U.S.C. 5031; 40 U.S.C. 486(c); and 41 CFR 101-4.1.

Source: 41 FR 55712, Dec. 22, 1976, unless otherwise noted.

§ 746.1 Purpose.

This part implements Department of Defense Directive 5535.3 of November 2, 1973 and 41 CFR Subpart 101-4.1, and sets forth the policy, terms, conditions, and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America and in the custody of the Department of the Navy.

§ 746.2 Policy.

(a) A major premise of the Presidential Statement fo Government Patent Policy, August 23, 1971 (36 FR 10887, August 26, 1971), is that government inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a United States citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) Subject to the following: (1) Any existing or future treaty or agreement between the United States and any foreign government or inter-governmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Navy research and development contracts where such licenses or other rights to such inventions are provided for in the contract and retained by the party contracting with the Department of the Navy, no license shall be granted or implied in a government invention, except as provided for in this part.

(e) No grant of a license under this part shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisiton and use of rights pursuant to this part shall not be immunized from the operation of state or federal law by reason of the source of the grant.

§ 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

§ 746.4 Definitions.

(a) "Government invention" means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

§ 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 746.6 and 746.7, subject to the applicable procedures of § 746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

§ 746.6 Nonexclusive license.

(a) *Availability of licenses.* Each government invention normally shall be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under § 746.8.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensees to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to contine to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the

Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.7 Limited exclusive license.

(a) *Availability of licenses.* Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to paragraph (a) of § 746.11 for a period of at least six months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any nonexclusive license granted on the invention; and

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of § 746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a)(3) of § 746.7 the Chief of Naval Research has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 746.2 and in accordance with the procedures set forth in § 746.11.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c)(6) and (c)(7) of § 746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a nonexclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the

invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United States, and by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United states. If the Chief of Naval Research finds it to be in the public interest, this license may also be expressly subject to this same royalty-free right by or on behalf of state and municipal governments.

(7) The license shall reserve to the Chief of Naval Research the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances:

(i) The extent that the invention is required for public use by government regulations, or

(ii) As may be necessary to fulfill health or safety needs, or

(iii) For other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Chief of Naval Research. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Chief of Naval Research.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government shall make no representation or warranty as to validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inventions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

§ 746.9 Royalties.

(a) *Nonexclusive license.* Normally, royalties shall not be changed under nonexclusive licenses granted to United States citizens and United States corporations on government inventions; however, the Chief of Naval Research may require other consideration.

(b) *Limited exclusive license.* A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

§ 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

§ 746.11 Procedures.

(a) *Publication requirements.* The Chief of Naval Research shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) *Contents of a nonexclusive license application.* An application for a nonexclusive license under a government invention should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant's business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant's plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) *Contents of an exclusive license application.* An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of § 746.11, an application for an exclusive license shall include:

(1) Applicant's status, if any, in any one or more of the following categories:

(i) Small business firm;

(ii) Minority business enterprise;

(iii) Location in a surplus labor area;

(iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant's best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under inventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) *Published notices.* (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

(i) Identification of the invention;

(ii) Identification of the selected licensee;

(iii) Duration and scope of the contemplated license; and

(iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of § 746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of

Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application withing a reasonable period under a nonexclusive license; or

(B) The Chief of Naval Research determines that third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(i) Identification of the invention;

(ii) Identification of the licensee; and

(iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) § 746.11, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(i) Identification of the invention;

(ii) Identification of the licensee; and

(iii) Effective date of the modification or revocation.

(e) *Modification or revocation.* (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Research if the licensee willfully makes a false statement of material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Research shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e)(1) of § 746.11, or to show cause why the license should not be modified or revoked.

(f) *Appeals.* An applicant for a license, a licensee, or such other third party who has participated under paragraph (d)(1)(iv)(B) of § 746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 746.12 Litigation.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

§ 746.13 Transfer of custody of Government inventions.

The Chief of Naval Research may enter into an agreement to transfer custody of a Government invention to another government agency for purposes of administration, including the granting of licenses pursuant to this part.

SUBCHAPTER E—CLAIMS

PART 750—GENERAL CLAIMS REGULATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2733, 5031, and 5148; 31 U.S.C. 240-243; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6028, Mar. 6, 1973, unless otherwise noted.

Subpart A—General Provisions for Claims

§ 750.1 Scope of Subpart A.

(a) General: The Judge Advocate General is responsible for administration and supervision, worldwide, of claims arising under the Federal Tort Claims Act (Subpart B of this part), the Military Claims Act (Subpart C of this part), the Nonscope Claims Act (Subpart D of this part), the Personnel Claims Act, the Foreign Claims Act, the Act of September 7, 1962, the Medical Care Recovery Act (Subpart A of Part 757 of this chapter), and the Federal Claims Collection Act of 1966 (Subpart B of Part 757 of this chapter).

(b) This Subpart A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this Subpart A conflict with the specific provisions of any subsequent subpart of this part, the specific provisions govern.

(1 CFR 18.14, and Part 21, Subpart B)

[39 FR 20681, June 13, 1974, as amended at 45 FR 8600, Feb. 8, 1980]

§ 750.2 Investigation: In general.

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to insure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

§ 750.3 Investigation: Requirements.

(a) *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in § 750.36 (c), (d), § 750.55(d) or § 750.65(b), the investigative report must document the factual basis for the exclusion.

(b) *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Chief of the Torts Section, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in § 750.80 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see § 750.53(c)(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

(c) *Investigation without delay.* Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(d) *Additional requirements under other regulations.* This part in no way modifies the requirements of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General Report Control Symbol JAG 5890-12 is assigned to this report.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976]

§ 750.4 Investigation: Responsibility for.

(a) *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred.

Where two or more activities are involved, see section 0207 of the Manual of the Judge Advocate General. If a nonnaval activity is concerned, see § 750.3(b)(3). Such nonnaval activity should be promptly notified of the incident.

(b) *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

(c) *Report of Motor Vehicle Accident, Standard Form No. 91 RCS JAG 5890-13.* The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 41 FR 26864, June 30, 1976]

§ 750.5 The investigating officer: In general.

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To insure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignment he may have.

§ 750.6 The investigating officer: Duties.

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

(a) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(b) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

(c) To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.

(d) To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

(e) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see § 750.14.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage, or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(f) To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

(g) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officers, if the injured person does not object, should have a physical examination of the injured person conducted at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available may be made locally. Any expense involved will be ab-

sorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with paragraph (1) of this paragraph (g).

(h) To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $600 as set forth in § 750.7(b).

(i) To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by § 750.13 has been submitted by the claimant.

(j) To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by § 750.7 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

§ 750.7 The investigative report: Contents.

A written report of investigation will be made in each case using standard forms whenever appropriate.

(a) *Pertinent data.* Except in cases falling within the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, service numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and addresses of witnesses.

(7) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in § 750.31(b). The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(8) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved,

nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(11) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(12) A statement as to whether any person involved, violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(13) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(14) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(16) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under § 750.6 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.6 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Subpart B of this part) or the Military Claims Act (Subpart C of this part); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix page 20-c.[1]

§ 750.8 The investigative report: Action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in § 750.7(b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

(b) *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention Staff Judge Advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

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§ 750.9 The investigative report: Action by reviewing authority.

(a) *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(b) *When a claim has been filed.* If a claim has been filed, see § 750.16. When a claim is received, all holders of the investigative report shall be notified.

§ 750.10 Claims: In general.

(a) *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 750.11–750.22 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

(b) *Claims in favor of the United States.* See Part 757 of this chapter for the processing of claims in favor of the Government.

(c) *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to: (1) Provide such persons with the proper claim forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of § 750.13. A federal official must be careful not to violate 18 U.S.C. 205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See § 727.7(d) concerning requests for legal assistance in connection with claims against the United States.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976]

§ 750.11 Claims: A proper claimant.

(a) *Damage to property cases.* A claim for damage to or loss, or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

(b) *Personal injury or death cases.* A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in § 750.40, when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of

§ 750.16(c-d) apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part of shares thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all power for attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.12 Claims: Presentment of.

(a) *Standard Form No. 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95 (see appendix page 20-a),[1] shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim, combining damage to property and personal injury or death, may be submitted by a claimant.

(b) *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, Washington, D.C. 20370. See § 750.40.

§ 750.13 Claims: Contents of.

(a) *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement

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or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: A written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in § 750.6(d)(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.14 Claims: The scope of liability and the measure of damages.

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see §§ 750.36, 750.55, and 750.65). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see §§ 750.37, 750.56, and 750.65).

§ 750.15 Claims: Action by receiving officer or command.

(a) *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

(b) *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a nonnaval activity is or may be the activity most directly involved, see § 750.3(b)(3) and of paragraph (d) of this section.

(c) *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with §§ 750.2—750.7 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by § 750.8.

(d) *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

§ 750.16 Claims: Action by adjudicating authority.

(a) *Review prior action.* The adjudicating authority is ultimately resonsible for determining that an adequate and complete investigation in accordance with §§ 750.2—750.7 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

(b) *Determine sufficiency of claim.* A determination of the sufficiency of a claim under §§ 750.11—750.12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

(c) *Adjudication of claims.* (1) Claims within the adjudicating authority. Except as provided in § 750.35(c) concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in § 750.80. In unusual cases, the entire record, together with the information required by subsection of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command. Whenever a case is retained for negotiation more than 6 months after the claim has been submitted, an interim status report will be made to the Judge Advocate General (Litigation and Claims).

(d) *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this paragraph.

(e) *Litigation reports.* Most litigation reports originate from the Litigation and Claims Division of the Office of the Judge Advocate General. The Judge Advocate General may request that the cognizant district judge advocate or staff judge advocate provide a litigation report directly to the United States Attorney representing the Government's interest. A litigation report consists of a letter addressed to the Department of Justice, copy to the U.S. Attorney, containing a narrative summary of the pertinent facts concerning the claim upon which the lawsuit has been filed in the United States district court. It will normally contain an evaluation of the facts together with a comment on the law of the State where the claim arose and recommendations respecting settlement or defense of the case. The report should tell whether an administrative claim (Standard Form 95) or other writing sufficient under § 750.12 was submitted and what disposition was made of such claim. If records show that no administrative claim has been filed, prompt notification of this fact shall be given to the Judge Advocate General, the Department of Justice, and the U.S. Attorney. Copies of the enclosures to the JAG Manual investigation should be provided if they are not classified for security reasons. The investigative officer's finding of facts, opinions, recommendations and endorsements thereon shall not be released except as specifically authorized by the Secretary of the Navy or the Judge Advocate General in accordance with § 750.23. If there is a question as to the propriety of releasing a particular document or information, the matter should be referred to the Judge Advocate General (Litigation and Claims) for resolution.

§ 750.17 Claims: Payment of.

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See § 750.40 regarding the payment of Federal tort claims in excess of $2,500 by the General Accounting Office and appendix page 20-d.[1]

§ 750.18 Claims: Settlement agreement and release.

(a) *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form No. 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim. A sample settlement agreement is contained in appendix page 20-b.[1]

(b) *Release.* Except for an advance payment pursuant to § 750.71 the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b) and Subpart B of this part also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.19 Claims: Disposition or denial of.

(a) *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

(b) *Final denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail and return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate U.S. District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

§ 750.20 Claims: Amendment, appeal, or reconsideration of.

(a) *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See §§ 750.34(e) and 750.40.

(b) *Appeal or reconsideration.* (1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Subpart B of this part), the claimant may, in writing and provided such writing is received by the authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See §§ 750.34(i) and

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750.40. Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Subpart C of this part), or not cognizable under any other provision of law (Subpart D of this part), the claimant may, in writing and provided such writing is received by the proper authority under § 750.53(h) or § 750.53(c) not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

(c) *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by § 750.19.

§ 750.21 Claims: Action required upon notice of suit.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 U.S.C. 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commandant of the cognizant naval district, to the attention of the district staff judge advocate who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See §§ 750.2 and 720.20(c).

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

(c) *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. In addition, the commandant shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

(d) *Litigation reports.* See § 750.16(e).

§ 750.22 Claims: Finality.

Subject to the provisions of 28 U.S.C. 1346(b) and § 750.34(i) respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of § 750.53(h) regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

§ 750.23 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the basis of a claim against the United States unless such release has been properly authorized by competent authority. This prohibition does not apply to advice concerning the correct administrative procedure for filing claims or to providing prospective claimants with appropriate claim forms. Disclosure of information from an official JAG Manual investigation, excluding all endorsements, findings of fact, opinions, recommendations, appended material from personnel and medical records, and other material privileged under the Freedom of Information Act (5 U.S.C. 552), may be released by the adjudicating authority set forth in § 750.80 provided all claims filed or anticipated are within his adjudicating authority. All other requests for disclosure of information shall be processed in accordance with Subpart C of Part 720 of this chapter.

§ 750.24 Single-service assignment of responsibility for processing of claims.

(a) *Applicable law.* Department of Defense Directive 5518.5 series (NOTAL) has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act (10 U.S.C. 2734);

(2) Military Claims Act (10 U.S.C. 2733 (see Subpart C of this part));

(3) Act of September 7, 1962 (10 U.S.C. 2734a and 2734b), pro rata cost sharing of claims pursuant to international agreement;

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;

(5) Act of September 25, 1962 (42 U.S.C. 2651-2653) claims for reimbursement for medical care furnished by the United States (see Part 757 of this chapter);

(6) Act of October 9, 1962 (10 U.S.C. 2737), claims not cognizable under any other provisions of law (see Subpart D of the part);

(7) The Federal Claims Collection Act of 1966 (31 U.S.C. 951-953); the Act of June 1921 (31 U.S.C. 71), claims and demands by the Government of the United States; and

(8) Act of September 8, 1961 (10 U.S.C. 2736), advance or emergency payments (*see* Subpart E of this part).

(b) *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under paragraphs (a)(4), (5), or (7) of this section, or against the United States cognizable under paragraphs (a)(1) through (4), (6), or (8) of this section which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, Republic of Zaire, and as the Receiving State Office in the United States under paragraphs (a)(3) and (4) of this section.

(2) Department of the Navy: Australia, Ethiopia, Iceland, Italy, Portugal, and the Republic of Vietnam.

(3) Department of the Air Force: Canada, Denmark, Greece, Greenland, India, Japan, Nepal, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(c) *U.S. forces afloat cases under $500.* Notwithstanding the provisions of subsection b above, the Department of the Navy is authorized to settle claims under $500 caused by Navy personnel not acting within scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in paragraph (a)(4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(d) *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 41 FR 26864, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§§ 750.25—750.29 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.30 Scope of Subpart B.

The regulations of this Subpart B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in § 750.40 and are expressly incorporated into the regulations of the Judge Advocate General. In cases of conflict between provisions of §§ 750.30—750.39 and the provisions of § 750.40, the provisions of § 750.40 prevail for Federal Tort Claims Act claims.

§ 750.31 Definitions.

(a) *Employees of the Government.* The term "Employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

(b) *Scope of employment and line of duty.* "Scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondent superior under the State law of the jurisdiction in which the act or omission occurred.

§ 750.32 Statutory authority.

(a) *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. 2671-80, Tort Claims Procedure, the U.S. district courts including the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 1346(b)).

(b) *Setoff, etc., encompassed.* The jurisdiction described in paragraph (a) of this section includes jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States (28 U.S.C. 1346(c)).

(c) *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 U.S.C. 1402(b)).

(d) *Jury trial.* Any action against the United States under 28 U.S.C. 1346(b) shall be tried without a jury (28 U.S.C. 2402).

(e) *Exclusive character of remedies*—(1) *Action against the United States.* The remedies provided by 28 U.S.C. 1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United

States under 28 U.S.C. 1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 U.S.C. 2679(b)), the immunity arises from case law (Barr v. Matteo, 360 U.S. 564 (1959); Bates v. Carlow, 430 F. 2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (Willingham v. Morgan, 424 F. 2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. See § 720.20(c) and JAG Instruction 582.2 of February 2, 1962. Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974]

§ 750.33 Administrative claim and consideration as a prerequisite to suit.

(a) No action may be maintained against the United States under 28 U.S.C. 1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See §§ 750.34(b) and 750.34(h) for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this paragraph do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 U.S.C. 2675(a)).

(b) No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 U.S.C. 2675(b)). See § 750.34(c) regarding the amendment of an administrative claim.

§ 750.34 The administrative claim.

(a) *Proper claimant*—(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

(b) *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See appendix page 20-a[1] for a sample form. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-months provision of § 750.33(a), a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See § 750.33(b)(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

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(c) *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See §§ 750.40 and 750.13 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim.

(d) *Investigation and examination.* The claim shall be investigated in accordance with Subpart A of this part. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 U.S.C. 2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See § 750.40.

(e) *Amendment of the claim.* A proper claim under paragraph (b) of this section may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally denied claim for which reconsideration has been requested under paragraph (i) of this section may be amended.

(f) *Payment of the claim.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with § 750.17. Payments in excess of $2,500 shall be paid in accordance with § 750.40. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See appendix page 20-d.[1]

(g) *Settlement agreement.* A sample settlement agreement including the required statement concerning fee limitations in Federal Tort Claims Act cases is contained in appendix page 20-b.[1] See § 750.18.

(h) *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with §§ 750.19 and 750.40.

(i) *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with § 750.20c. Claimant's option under § 750.33a and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this paragraph, but is a final denial for purposes of §§ 750.33, 750.34(h), and 750.38. Nothing in this paragraph shall be construed to permit amendment of a finally denied claim. A request for reconsideration filed solely for the purpose of extending the § 750.38(b) statutory period for filing suit shall be void.

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§ 750.35 Administrative consideration: Who is authorized?

(a) *Statutory authorization.* Pursuant to 28 U.S.C. 2672 of the Federal Tort Claims Act and in accordance with regulations issued by the Attorney General (see § 750.40), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See paragraph (c) of this section for limitations on the authority of the Secretary or his designee.

(b) *Specific delegation and designation.* See § 750.80.

(c) *Limitations on authority.* Notwithstanding the provisions of paragraphs (a) and (b) of this section:

(1) Any award, compromise, or settlement by the Navy under 28 U.S.C. 2672 in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 U.S.C. 2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(i) A new precedent or a new point of law is involved;

(ii) A question of policy is or may be involved;

(iii) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(iv) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000; and

(3) An administrative claim presented under 28 U.S.C. 2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in paragraphs (c) (2) and (3) of this section in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with § 750.16(d).

§ 750.36 Scope of liability.

(a) *In general.* Subject to the exceptions listed in paragraphs (c) and (d) of this section in adjudicating claims under § 750.35, the liability of the United States is generally determined in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2672). Where local law and applicable Federal law conflict, the latter prevails.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Claims not within the Act.* By virtue of 28 U.S.C. 2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of any employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see § 750.55(c) for processing mail claims under the Military Claims Act;

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741-752), or the act of March 3, 1925 as amended (46 U.S.C. 781-790) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 U.S.C. 761) are not excepted from the provisions of 28 U.S.C. 1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the JAG for adjudication in all cases. By virtue of 28 U.S.C. 2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Part 752 of this chapter. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 U.S.C. App. 1-44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of Federal Tort Claims Act shall apply to any claim arising on or after March 16, 1974, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this provision, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of federal law.

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country; and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(d) *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (Feres v. United States, 340 U.S. 135 (1950); compare Brooks v. United States, 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 U.S.C. 240-243 and the applicable Personnel Claims Regulations (see Part 751 of this chapter);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 U.S.C. 7901-7903, 8101-8193), is applicable (see 5 U.S.C. 8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a nonappropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (see 33 U.S.C. 905 and 5 U.S.C. 8171);

(5) That portion of any claim attributable to the fault or negligence of a

contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (see United States v. Seckinger, 397 U.S. 203 (1969), and § 750.7(a)(15)), and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue-producing activities, or is a Government corporation or a nonappropriated-fund activity (see 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); but see 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (see 22 Comp. Dec. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (see 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

(1 CFR 18.14, and Part 21 Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§ 750.37 Measure of damages.

(a) *In general.* Subject to the exceptions set out in paragraphs (b) and (d) of this section for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 U.S.C. 2674). When there is a conflict between local law and applicable Federal law, the latter governs.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 U.S.C. 2674).

(d) *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in § 750.80 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. See § 750.35(c)(2)(iii) concerning settlement without indemnification or contribution.

(e) *Setoff.* In a case brought by a serviceman not barred by the Feres doctrine (Feres v. United States, 340 U.S. 135, (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (Brooks v. United States, 337 U.S. 49, (1949)).

§ 750.38 Statute of limitations.

(a) Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 U.S.C. 2401(b)). The filing of suit against the United

States does not constitute the presentment of a claim under this subsection or under 28 U.S.C. 2401(b) (Gunstream v. United States, 307 F. Supp. 366 (C.D. Cal. 1969)).

(b) A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 U.S.C. 2401(b)). See § 750.34(i) regarding a request for reconsideration.

§ 750.39 Attorney fees.

(a) Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to §§ 750.34—750.35 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 U.S.C. 2678).

(b) The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See appendix page 20-b[1] for a sample settlement agreement including a statement regarding attorney fees.

§ 750.40 Regulations of Attorney General governing administrative claims procedure.

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, appear in 28 CFR Part 14.

§§ 750.41—750.49 [Reserved]

Subpart C—Military Claims Act

§ 750.50 Scope of Subpart C.

The regulations of this Subpart C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 U.S.C. 2733).

§ 750.51 Definitions.

As used in this part (§§ 750.50-750.59);

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health Service who are serving with the Navy or Marine Corps.

(c) Military includes "naval."

§ 750.52 Statutory authority.

(a) *General authorization.* Subject to the statutory exceptions set forth in § 750.55(d), the Secretary of the Navy—or the Judge Advocate General, subject to appeal to the Secretary—may settle and pay, in an amount not in excess of $25,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss of destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 U.S.C. 2733(a)).

(b) *Authorization for payment of claims in excess of $25,000.* If the Secretary of the Navy considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and paragraph (a) of this section, he may make a partial payment of $25,000 and refer the excess to the Office of Management and Budget for submission to Congress for its consideration (10 U.S.C. 2733(d)).

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(c) *Delegable authorization to pay claims not in excess of $5,000.* In any case where the amount to be paid is not more than $5,000, the Secretary of the Navy may delegate the authority of 10 U.S.C. 2733(a) and paragraph (a) of this section, subject to appeal to the Secretary or his designee for that purpose (10 U.S.C. 2733(g)). See § 750.80 for the Navy and Marine Corps officials with delegated authority to pay claims, and see § 750.53(h) for the appellate designees under this section.

(d) *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 U.S.C. 1346(b) only, and, by virtue of 10 U.S.C. 2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

(e) *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under Chapter XXII of the Manual of the Judge Advocate General.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26864, June 30, 1976, 45 FR 8600, Feb. 8, 1980]

§ 750.53 The administrative claim.

(a) *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of §§ 750.11 and 750.34(a) apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to § 750.56(b).

(b) *Proper claim and presentation.* A claim is proper in form and presentation if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

(c) *Evidence and information in support of the claim.* See section 2013 for the evidence and information required to substantiate a claim. 10 U.S.C. 2733(b)(5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

(d) *Amendment of the claim.* A proper claim may be amended by the claimant at any time prior to a final disposition of the claim. An amendment of a claim shall be submitted in writing and shall be signed by the claimant or a duly authorized agent or legal representative.

(e) *Payment of the claim.* Payment of a claim shall be accomplished in accordance with § 750.17.

(f) *Settlement agreement.* See § 750.18 and appendix page 20b.

(g) *Denial of the claim.* See § 750.19.

(h) *Appeal of the claim.* (1) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon.

(2) An appeal in any case where the amount in contention exceeds $5,000 may be decided either by the Secretary of the Navy or the Judge Advocate General, except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary.

(3) An appeal in any case where the amount in contention is $5,000 or less may be decided either by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims); provided, any such appeal must be decided by an official senior to the official who originally disapproved the claim.

(4) See § 750.20(c) for procedure for disposing of an appeal.

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, July 13, 1974; 41 FR 26864, June 30, 1976]

§ 750.54 Authority to settle.

See § 750.80.

§ 750.55 Scope of liability.

(a) *Caused by a member or employee.* Subject to the exceptions of paragraph (d) of this section, the Navy shall be responsible under 10 U.S.C. 2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

(b) *Otherwise incident to noncombat activities.* Subject to the exceptions of paragraph (d) of this section a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: Maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barriage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

(c) *Specific claims payable.* Claims payable by the Navy under paragraphs (a) and (b) of this section shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as a contract claims.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occupancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(d) *Claims not payable.* Notwithstanding paragraphs (a), (b), and (c) of this section, the following claims shall not be paid under 10 U.S.C. 2733:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the United States for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. 240-243) and applicable regulations (Part 751 of this chapter).

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. 2734) and applicable regulations thereto (Chapter XXII of the Manual of the Judge Advocate General);

(6) Any claim cognizable under 10 U.S.C. 7622 relating to admiralty claims and to claims for damages caused by naval vessels (Part 752 of this chapter);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in paragraphs (c)(2) and (4) of this section;

(8) Any claim for rent of real or personal property, except as provided in paragraphs (c)(2) and (4) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the

Federal Tort Claims Act and Subpart B of this part.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 39 FR 20681, June 13, 1974; 45 FR 8600, Feb. 8, 1980]

§ 750.56 Measure of damages.

In cases cognizable under the Military Claims Act (10 U.S.C. 2733), the measure of damages shall be as follows:

(a) *Damage to property.* (1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs: *And provided,* That idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(c) *Limitations.* Payment shall not be made for the following elements of damage: Interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

(d) *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

§ 750.57 Statute of limitations.

No claim may be settled under the Military Claims Act unless it is presented in writing within 2 years after it accrues. If such accident or incident occurs in time of war of armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, any claim may, on good cause shown, be presented within 2 years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 U.S.C. 2733(b)(1)).

§§ 750.58—750.59 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

§ 750.60 Scope of Subpart D.

The regulations of this Subpart D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 U.S.C. 2737. These claims are sometimes referred to as "nonscope" claims and are claims that are not cognizable under any other provision of law.

§ 750.61 Definitions.

(a) *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

(c) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

§ 750.62 Statutory authority.

(a) *General authorization.* 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

(b) *No right to sue.* There is no right to sue the United States on a claim arising under 10 U.S.C. 2737.

(c) *Territorial application.* There is no geographical limitation on the application of 10 U.S.C. 2737.

§ 750.63 Proper claim and claimant/processing of the claim.

(a) *General.* The general claims provisions of Subpart A of this part apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be processed under 10 U.S.C. 2737 and this Part 750.

(b) *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

(c) *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 U.S.C. 2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see § 750.19(b)) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See § 750.20(b)(2).

§ 750.64 Officials with authority to settle.

See § 750.80.

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

§ 750.65 Scope of liability and measure of damages.

(a) *Scope of liability.* Subject to the exceptions of paragraph (b) of this section, the responsibility of the United States shall be in money damages, not to exceed $1,000, for damage to or loss or destruction of property or for personal injury or death caused by military personnel or civilian officials or employees:

(1) Incident to the use of a vehicle of the United States at any place; or

(2) Incident to the use of any other property of the United States on a Government installation; and

(3) Not cognizable under any other provision of law.

(b) *Specific claims not payable.* A claim may not be allowed under 10 U.S.C. 2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within 2 years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

(c) *Measure of damages.* Compensation under 10 U.S.C. 2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with § 750.56, except that damages for personal injury or death under this part shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States, and except that in no case under this part shall an award for damages be in excess of $1,000.

§ 750.66 Statute of limitations.

A claim against the United States under 10 U.S.C. 2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

§§ 750.67-750.69 [Reserved]

Subpart E—Advance Payments

§ 750.70 Scope of Subpart E.

The regulations of the Subpart E apply exclusively to the payment of amounts not to exceed $1,000 under 10 U.S.C. 2736 in advance of submission of a claim.

§ 750.71 Statutory authority.

10 U.S.C. 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

§ 750.72 Officials with authority to make advance payments.

See § 750.80.

§ 750.73 Conditions for advance payments.

Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(a) The injury, death, damage, or loss would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734);

(b) The payee, insofar as can be determined, would be a proper claimant under the Foreign Claims Regulations or is the spouse or next of kin of a proper claimant who is incapacitated;

(c) The provable damages are estimated to exceed the amount to be paid;

(d) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(e) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(f) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (1) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (2) occurred "incident to noncombat activities" of the Department of Navy as defined in § 750.55(b).

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 45 FR 8600, Feb. 8, 1980]

§§ 750.74—750.79 [Reserved]

Subpart F—Authorization To Adjudicate

§ 750.80 Table of delegation and designated authority to pay claim.

"(a) *Amount.* See Appendix A-20-(e) of the Manual of the Judge Advocate General.

(b) *Territory.* See Appendix A-20-(f) of the Manual of the Judge Advocate General."

[38 FR 6028, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

PART 751—PERSONNEL CLAIMS REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 240-243; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6040, Mar. 6, 1973, unless otherwise noted.

§ 751.0 Authority.

Sections 751.1 to 751.29 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 751.1 Definitions.

In this part:

(a) *Claim.* "Claim" means any claim filed under oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture, or abandonment of their personal property incident to their service.

(b) *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

(c) *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

(d) *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

(e) *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

§ 751.2 Scope.

Under this part, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable per incident on a claim is $15,000.

[38 FR 6040, Mar. 6, 1973, as amended at 41 FR 26865, June 30, 1976]

§ 751.3 Claims payable.

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

(a) *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurrence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see paragraphs (a) (1) and (2) of this section), designated by superior authority for the reception of the property.

(b) *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) When shipped under orders; or

(2) In connection with travel under orders; or

(3) In connection with travel in performance of military duty with or without troops.

(c) *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

(d) *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerrilla, organized brigandage or other belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

(e) *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

(f) *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(g) *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

(h) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him.

(i) *Claims for damage to or loss of motor vehicles.* (1) Claims for damage to or loss of motor vehicles are limited to a maximum $1,000.00, not including the contents thereof, and are payable only if:

(i) The motor vehicle was located at quarters or other authorized places as defined in § 751.3(a), or

(ii) The damage to or loss was incurred in the authorized performance of official Government business, or

(iii) The damage to or loss was incurred while the motor vehicle was located on base: *Provided,* The loss or damage was caused by fire, flood, hurricane, or other unusual occurrence or by theft or vandalism, or

(iv) The damage to or loss was incurred under any of the circumstances contemplated by paragraphs (a), (b), (d), (e), or (f) of this section. See also § 751.4(g).

(2) Claims arising during the shipment of motor vehicles under permanent change of station orders are not subject to a $1,000.00 maximum.

(3) The following definitions pertain as used within this section.

(i) "Motor vehicles" includes automobiles, trucks, campers, recreation vehicles, boats, and motorcycles.

(ii) "On base" means any fixed land area, wheresoever situated, controlled, and used by United States military activities or other Department of Defense activities. Claims for damage to or loss of motor vehicles arising out of an incident occurring on board a base such as United States Naval Station, Rota, Spain (a Spanish Naval Base) or on board a NATO Base such as Allied Forces Southern Europe, Bagnoli, Naples, Italy, are not intended to be excluded by this section because the base is not "controlled" by the United States. Claims arising out of an incident occurring on board a foreign military base not controlled or used by United States military activities are intended to be excluded. In case of doubt, the matter should be referred to the Judge Advocate General (Claims).

(iii) "Other unusual occurrence" does not include collision with another vehicle. See § 751.4(g).

(iv) "Shipment" means transportation via Government vessel, chartered commercial vessel, or by Government bill of lading on commercial vessels, and includes storage, on-loading, and off-loading incident thereto.

(j) *Housetrailers.* (1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, house trailers and their contents while on Government property and payable under § 751.3(a)(3). Claims for loss of, or damage to, house trailers and their contents arising incident to shipment are payable under § 751.3(b)(1): *Provided,* That, when transported by other than the service member or an agent or agency of the Government,

the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the housetrailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the housetrailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the housetrailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a housetrailer for shipment by a carrier is presumptive evidence that the housetrailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a prima facie case by proving that the damage occurred during transportation. Damage which is due to (i) the negligence of the carrier, or (ii) collision which the housetrailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (e.g., a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (e.g., that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a housetrailer claim should include, but is not necessarily limited to, the following:

(i) Copy of the premove inspection report;

(ii) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(iii) Copy of the damage report (generally prepared by the carrier);

(iv) Government inspection (include photographs of each area or item of damage where this may prove helpful);

(v) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(vi) Repair bills or estimates as to the cost of repairs;

(vii) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(viii) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(ix) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(x) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

(k) Theft from the person of the claimant is reimbursable if it is established that the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreational facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities immediately, or as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974; 43 FR 25425, June 13, 1978; 43 FR 33421, July 31, 1978]

§ 751.4 Claims not payable.

Claims may not be allowed for:

(a) *Money or currency.* Money or currency, except as provided for by §§ 751.3(h) and 751.3(k), or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee. The adjudicating authority should use the test of whether the claimant did the best he could under the circumstances to protect his property. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) *Unserviceable property.* Worn-out or unserviceable property.

(c) [Reserved]

(d) *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

(e) [Reserved]

(f) *Articles being worn.* Articles being worn, except under the circumstances described in § 751.3(c), (d), (e), and (k) above.

(g) *Intangible property.* Intangible property, such as bankbooks, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(h) *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

(i) *Motor vehicles.* Motor vehicle claims for collison damage are not payable under this chapter, but may be paid by a military department under the Military Claims Act (Subpart C of Part 750 of this chapter) caused by a member or employee of that department.

(j) *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

(k) *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

(l) *Losses recovered from insurers or carriers.* Losses, or any portion thereof, which have been recovered from an insurer or carrier.

(m) *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under § 751.3(a) are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

(n) *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(o) *Negligence of claimant.* Claims for lost or damaged personal property caused in whole or in part as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of employment. Negligence may be defined as failure to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

(p) *Business property.* Property normally used for business or profit.

(q) *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations.

Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(r) *Theft.* In all cases where a claim is made for articles lost by theft, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, robbery, burglary, or housebreaking.

(s) *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in § 751.3(j). Household effects contained in trailers may be considered under § 751.3(a)(1) when the trailer is located in an assigned area on a Government installation.

(t) *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974; 41 FR 26865, June 30, 1976; 43 FR 25426, June 13, 1978]

§ 751.5 Type and quantity of property.

(a) *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

(b) *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (e.g., borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

§ 751.6 Computation of award.

(a) *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of § 751.13(b). If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

(b) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its costs, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

(c) *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

(d) *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

(e) *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

(f) *Maximum allowance.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

§ 751.7 Statute of limitations.

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues: *Provided,* That if the claim accrues in time of war, or in time of armed conflict in which the Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

§ 751.8 Demand on carrier, contractor, and/or insurer.

(a) *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) The payment voucher;

(2) The completed personnel claim form;

(3) The estimated or actual cost of repair:

(4) A document indicating the conditions of the item upon delivery to the carrier; and

(5) A document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in appendix section A-21(a).[1]

(c) *Nontemporary storage warehousemen.* Whenever property is damaged, lost, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the owner or claims investigating officer will file a written claim for reimbursement with the warehouseman in accordance with the terms of the applicable storage agreement.

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(d) *Pack-and-crate contractors.* When loss or damage is the result of improper packing or crating, the claims-investigating officer will prepare and forward to the origin Navy Personal Property Office the fully documented claim against the packing-and-crating contractor including the following information:

(1) The applicable paragraph number of MILSTD 212 and a written explanation of the deficiency;

(2) When available, photographs of the damage and of the external shipping container;

(3) A statement describing the external condition of the shipping container, i.e., any evidence of rough handling;

(4) A statement indicating whether or not there is any evidence of water damage to the external shipping container;

(5) A statement indicating whether cartons, crates, etc. were properly packed in the external shipping container and whether sufficient stuffing was added to prevent shifting of articles or packages inside the box as required by MIL-STD 212.

The origin Navy Personal Property Office will file the claim with the contractor and pursue it to settlement. If the origin transportation office was a non-Navy activity, the claims investigating officer will pursue the claim against the pack-and-crate contractor.

(e) *Insurer.* Whenever the property which is damaged, lost or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in § 751.9.

(f) *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude seasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22420, June 24, 1974]

§ 751.9 Concurrent claims on the carrier, contractor, or insurer and the Government.

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

§ 751.10 Form of demand on carrier, contractor, or insurer.

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (appendix section A-

21(b))[1] with a copy of DD Form 1845 (appendix section A-21(d))[1] attached. Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

§ 751.11 Responsibilities of the claimant regarding claims against carriers, contractors and/or insurers.

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

§ 751.12 Transfer of right against the carrier, contractor, or insurer.

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

§ 751.13 Recoveries from carrier, contractor, and/or insurer.

(a) *Monetary Recoveries.* In the event that a claimant receives payment from the United States under this part, and also receives compensation from a carrier, contractor, or insurer for the same loss, the United States shall request that the claimant reimburse the Government with a view to ensuring that the claimant is not compensated twice for the same loss.

(b) *Recovered Property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures or otherwise used for the benefit of the Government.

[43 FR 25426, June 13, 1978]

§ 751.14 Claims within provisions of other regulations.

(a) *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under Part 750, "General Claims" of this chapter.

(b) *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.15 Claimants.

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence.

(a) Spouse;
(b) Child or children;
(c) Father or mother, or both;
(d) Brothers or sisters, or both.

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§ 751.16 Form of claim.

(a) The claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on DD Form 1842 (see appendix section A-21-c)[1] with DD Form 1845 attached (see appendix section A-21-d).[1] If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a fourth copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

[39 FR 22421, June 24, 1974]

§ 751.17 Evidence in support of claims.

(a) *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "Competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be property fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should submit at least one written estimate of the value from a competent person: "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the in-

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vestigation report on the claim. In those cases where he knows the replacement cost to be less than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

(b) *Waiver of written estimates.* (1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

(c) *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

(i) Geographical location;

(ii) Whether quarters were assigned or provided in kind by the Government;

(iii) Whether quarters were regularly occupied by the claimant;

(iv) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(v) Measures taken to protect the property; and

(vi) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(i) Geographical area of the loss;

(ii) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(iii) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(i) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(ii) All bills of lading, and inventories of property shipped;

(iii) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (see §§ 751.8 and 751.9);

(iv) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(v) Where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer,

Date property was turned over,

Condition when property was turned over,

When and where property was packed, and by whom,

Date of shipment and re-shipment,

Copies of all manifests, bills of lading and contracts,

Date and place of delivery to claimant,

Date property was unpacked,

Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,

Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and

Whether the last common carrier or local civilian carrier was given a clear receipt.

(vi) At the time of application for shipment of household goods, the claimant shall prepare an inventory of personal property to be shipped having a value of $200 or more. The inventory or listing shall be descriptive and in detail, and shall list those items of personal property of a value of $200 or more *that will not otherwise appear on the carrier-prepared inventory* (i.e., an antique chair valued at $350 would not be packed in a carton but would normally be separately listed on the carrier-prepared inventory, but a $250 movie camera would normally be packed in a carton with other items vice being listed separately on the carrier-prepared inventory). The claimant-prepared inventory shall be countersigned by an appropriate individual at the office where application for the move is made. The original of the claimant-prepared inventory shall be retained by the claimant and submitted as part of his claim in the event of loss or damage to any item listed thereon. A copy thereof shall be retained by the office where application for the move is made. Nothing contained in this paragraph shall relieve the claimant from also supplying evidence to support the value of the loss. Failure to prepare the inventory/listing described supra may be considered grounds for disallowing compensation for a claimed item. Nonetheless, if a claimant fails to prepare and submit the inventory/listing described supra, for whatever reason, or inadvertently omits an item or items from the inventory, he may still be compensated for the loss or damage to items which should have been listed on the claimant-prepared inventory if the claim is accompanied by proof of ownership which may be, for instance, in the form of purchase receipts, cancelled checks, photographs, or statements of disinterested persons who observed such items in claimant's home.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(i) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(ii) A detailed statement of facts and circumstances showing applicable causes enumerated in § 751.3 (d) and (e).

(6) For property used for benefit of Government:

(i) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(ii) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(i) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(ii) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(iii) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

(d) *Privacy Act requirements.* When any claiment within the scope of this part is requested by a person acting of the Government's behalf to supply personal information about himself which will be made a part of the claim file, the person making the request shall first provide the individual with a Privacy Act statement, in duplicate, containing the particular advice prescribed in Secretary of the Navy Instruction 5211.5 series (32 CFR Part 701 Subparts F and G). The original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

[38 FR 6040, Mar. 6, 1973, as amended at 43 FR 25426, June 13, 1978]

§ 751.18 Filing of claim.

All claims coming within the cognizance of this part should, if practicable, be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

(a) *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

(b) *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

(c) *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

§ 751.19 Appointment of claims investigating officers.

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this part. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

§ 751.20 Investigation of claims.

Upon receipt of a claim filed in accordance with the provisions of this part, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects. With regard to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) as it pertains to obtaining personal information from claimants or witnesses, § 751.17, as well as appropriate parts of 32 CFR Part 750.

[38 FR 6040, Mar. 6, 1973, as amended at 43 FR 25426, June 13, 1978]

§ 751.21 Recovery action in transportation and storage losses.

(a) *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

(b) *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

(c) *Approval or denial of concurrent claim by carrier, contractor, or insurer.* (1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(i) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speed-letter format is shown in appendix section A-21(e).[1]

(ii) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to § 751.13, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

(d) *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A sample certificate is contained in appendix section A-21(f).[1] If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

(e) *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within 10 days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

(f) *Unjustified denials by the carrier, contractor or insurer*—(1) *Government bill of lading carriers*—(i) *Action by the claims investigating officer.* If a Government bill-of-lading carrier or its insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in addition to initiation of administrative action as appropriate under Interstate Commerce Commission Regulations, military tender of service, or other applicable regulation or agreement, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. A copy of the referral letter with enclosures will be sent to the origin-transportation officer. The carrier should be notified of this action by a copy of the referral or by separate correspondence.

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(ii) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a final demand on the carrier when liability is clear. The final demand shall set forth the exact amount of liability, in view of the supporting evidence, owed by the carrier under the terms of the Government bill of lading, the basis for the determination of the amount demanded, and notification that the demand is a final demand and that the file will be forwarded for involuntary collection by withholding amounts due from the Navy if payment is not received within 30 days. If, after 30 days from the date of the final demand, reimbursement from the carrier has not been received, the case file should be forwarded to the Navy Regional Finance Center, Code FF330, Washington, D.C. 20371, requesting that the amount demanded by the final demand be setoff against subsequent Government bill of lading earnings. The amount of withholding requested must be the amount of the final demand. If the amount of the final demand is in error, a new 30-day final demand must be made. In general, a carrier should not be permitted to continue negotiations after a final demand has been made. If a misunderstanding between the claims investigating officer and the carrier is obvious from the file, negotiation prior to a final demand may be desirable. Under normal circumstances, however, if the claims investigating officer and the carrier have been unable to reach agreement, a final-demand amount should be determined and a final demand made. The carrier should not be permitted to further delay payment of his legal liability by meaningless negotiation.

(2) *Nontemporary storage warehousemen*—(i) *Action by the claims investigating officer.* If a nontemporary warehouseman or his insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. The warehouseman should be notified of this action by a copy of the referral letter or by separate correspondence.

(ii) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further demand on the warehouseman or his insurer when liability seems clear. If recovery is not affected within 30 days from this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the appropriate area Military Traffic Management Command (MTMC) Headquarters for final determination of liability by the officer administering the warehouseman's basic agreement.

(iii) *Pack-and-crate contractors.* When the origin Navy personnel property office, or the destination claims investigating officer on a shipment originating at a non-Navy transportation office, fails to receive adequate response or recovery from a pack-and-crate contractor within 60 days or when a claim is denied by the contractor without sufficient justification, the matter should be referred immediately to the officer administering the contract under which the services were performed. In the case of a shipment originating at a non-Navy transportation office, the referral should be made via the origin transportation office. Each referral will include a full statement, with supporting evidence, substantiating that the contractor's denial of the claim is unjustified or that the settlement offer is inadequate. Due to the relatively short duration of pack-and-crate contracts, it is desirable to expedite processing of unjustified denials.

(iv) *Other carriers, contractors, or insurers.* Unjustified denial by other carriers, contractors, or insurers will be referred by the claims investigating officer to the adjudicating authority. The adjudicating authority will review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not received within 30 days from the date of this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the Judge Advocate General for additional recovery action.

(g) *Processing of carrier checks.* On occasion, a carrier will send a check for an amount less than the adjudicated amount of the claim against the carrier, and which contains a standard liability release statement on the reverse thereof. Such a check should *not* be deposited. The check should be returned to the carrier with a demand for the full amount due. Language as follows is appropriate:

> Your check in the amount of $(amount) in response to our letter (date) is hereby returned as not being an acceptable settlement offer. The adjudicated amount of your liability in this case is $(amount), and demand is hereby made for the full amount. Unless your check for the full amount is received within 30 days, the full amount will be set off from the amounts otherwise due to you.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22421, June 24, 1974; 43 FR 25426, June 13, 1978; 43 FR 33241, July 31, 1978]

§ 751.22 Preparation of claims investigating officer's report.

(a) *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (see appendix A-21 (h))[1] as a worksheet in appropriate cases and attach a copy of the form to his report.

(b) *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to preexisting damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with § 751.17(b) and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix section A-21-g[1] shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see appendix section A-21c(2))[1] when investigation of the claim is complete. Report control symbol JAG 5890-2 is assigned to this report.

(c) *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

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(d) *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (see appendix section A-21c(3))[1] in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable.

(e) *Forwarding of claim.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

(f) *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) and Secretary of the Navy Instruction 5211.5 series (32 CFR Part 701 Subparts F and G). Any indication of noncompliance shall be explained either in the investigative report on the forwarding endorsement and, when required, remedied in accordance with section 0308 of the Manual of the Judge Advocate General. The claims adjudicating authority has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.23 Action by commanding officer.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (See § 751.24(e).) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, and replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved.

(a) *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

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(b) *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

(c) *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in appendix section A-21(j).[1]

§ 751.24 Adjudicating authority.

(a) *Claims by Navy personnel.* (1) The following are authorized to adjudicate and authorize payment to personnel claims up to $15,000:

(i) The Judge Advocate General,

(ii) Deputy Judge Advocate General,

(iii) Any Assistant Judge Advocate General,

(iv) The Deputy Assistant Judge Advocate General (Claims),

(v) Commandants of Naval Districts and their staff judge advocates,

(vi) Officers in charge of naval legal service offices,

(vii) The Staff Judge Advocate attached to Naval Supply Center, Oakland, and Naval Activities, United Kingdom.

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000:

The Staff Judge Advocate attached to:

(i) Naval Base, Guantanamo;

(ii) Naval Base, Roosevelt Roads;

(iii) Naval Station, Panama Canal; and

(iv) Headquarters Support Activity, Taipei.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000:

(i) Heads of naval legal service branch offices;

(ii) Any judge advocate attached to a naval legal service office when specifically designated by the officer in charge;

(iii) The Staff Judge Advocate attached to Naval Supply Center, Puget Sound;

(4) All Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $1,000;

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $15,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $500; and

(7) Authorization to adjudicate and authorize payment of personnel claims up to a specific dollar amount is indicated supra, or by separate correspondence from the Judge Advocate General. Authorization to adjudicate claims up to a specific dollar amount is separate and distinct from holding an allotment. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Commands holding allotments from the Judge Advocate General are indicated in § 751.30. Suballotees are not listed.

(b) *Claims by Marine Corps personnel.* Claims by Marine Corps personnel, both military and civilian, are adjudicated and payment authorized by only the following:

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(1) Commandant of the Marine Corps;

(2) Deputy Chief of Staff for Manpower;

(3) Director, Personnel Services Division;

(4) Head, Personal Affairs Branch, Personnel Services Division;

(5) Head, Claims Section Personal; Affairs Branch; and

(6) Deputy Head, Claims Section, Personal Affairs Branch.

(c) *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this part and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated-fund activities should be referred directly to the appropriate nonappropriated-fund activity for investigation and payment.

(d) *Partial payments when hardship exists.* Every instance of loss or damage cognizable under this chapter can be expected to cause some degrees of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. Each authorization of partial payment must be accompanied by:

(1) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by Title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personal Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(2) A statement by the Claims Investigating Officer confirming that the claimant is a proper claimant under the provisions of this part and setting forth his opinion regarding the reasonablenes of the estimated total value of the claim, the extent to which the claim has been substantiated, the amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(3) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this part and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this subparagraph. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(e) *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in paragraph (a) of this section, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is specified in Navy Comptroller Manual section 023304 paragraph 3. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

(f) *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.25 Limitation on agent or attorney fees.

(a) *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243), the statutory authority underlying this part, provides in section 243 that:

> No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240-243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240-243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

(b) *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in § 751.39.

(c) *Other prohibition.* The provisions concerning an attorney's fee set forth in (a) above does not authorize a fee in those cases where a fee is prohibited for other reasons (see SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

§ 751.26 Separation from service.

Separation from the service or termination of employment shall not bar military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provisions of these regulations when such claim accrued prior to separation or termination.

§ 751.27 Meritorious claims not otherwise provided for.

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

§ 751.28 Reconsideration.

(a) A claim may be reconsidered which was previously disapproved in whole or in part even though final settlement has been made when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or subsequently submitted. A request for reconsideration shall be made in writing to the adjudicating authority originally acting on the claim and should include all documents which have been returned to the claimant. All requests for reconsideration shall be made within 6 months from the date the claimant received notice of the initial adjudication of his claim. Any adjudicating authority shall reconsider a claim upon which he has originally acted upon the request of a claimant or someone acting in the claimant's behalf and may settle it by granting such relief as may be warranted. If it is determined that the original action was incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. An adjudicating authority may also, on his own initiative, reconsider a claim which he has denied in whole or in part.

(b) If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire file and the adjudicating authority's recommendation, to the nearest appropriate $15,000 adjudicating authority for final disposition. Final reconsideration of claims initially adjudicated by $15,000 adjudicating authorities will be made by the Judge Advocate General.

(c) The forwarding endorsement of all adjudicating authorities shall contain specific reasons why the claim, in whole or in part, was denied, or why the requested relief was not granted, and shall address the specific points or complaints raised by the claimant's request for reconsideration.

[38 FR 6040, Mar. 6, 1973, as amended at 39 FR 22422, June 24, 1974; 43 FR 25427, June 13, 1978]

§ 751.29 Authorization for issuance of instructions.

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this part.

§ 751.30 List of commands that have received funding authority and accounting data from the Judge Advocate General.

The following is a list of commands (allottees) that have received funding authority and accounting data from the Judge Advocate General. There are personnel attached who have adjudicating authority and are capable of processing claims filed pursuant to 31 U.S.C. 240–243 (see § 751.24), or in the alternative, claims are adjudicated by personnel attached to another command, and in some instances adjudication is accomplished through a suballotment. Suballottees are not listed. The commands listed in this section are grouped for simplicity by the dollar amount adjudicating authority of personnel. *The listing contained in this section does not constitute adjudicating authority. Adjudicating authority by dollar amount is contained in § 751.24(a).*

(a) *$15,000 Authorities.*

1. NAVLEGSVCOFF Philadelphia
2. NAVLEGSVCOFF Norfolk
3. NAVLEGSVCOFF Charleston
4. NAVLEGSVCOFF Great Lakes
5. NAVLEGSVCOFF San Diego
6. NAVLEGSVCOFF Treasure Island
7. NAVLEGSVCOFF Seattle
8. NAVLEGSVCOFF Pearl Harbor
9. NAVLEGSVCOFF Newport
10. NAVLEGSVCOFF Memphis
11. NAVLEGSVCOFF Corpus Christi
12. NAVLEGSVCOFF Washington Navy Yard
13. NAVLEGSVCOFF Pensacola
14. NAVLEGSVCOFF Jacksonville
15. NAVLEGSVCOFF Naples
16. NAVLEGSVCOFF Subic
17. NAVLEGSVCOFF Guam
18. NAVLEGSVCOFF Yokosuka
19. COMEIGHT
20. COMNAVACT United Kingdom
21. NSC Oakland

(b) *$10,000 Authorities.*

22. NAVSTA Panama Canal
23. NAVBASE Roosevelt Roads
24. COMNAVBASE GTMO
25. HEDSUPPACT Taipei

(c) *$5,000 Authorities.*

26. NAVLEGSVBROFF New London
27. NAVLEGSVBROFF Key West
28. NAVLEGSVBROFF Orlando
29. NAVLEGSVBROFF Whidbey Island
30. NAVLEGSVBROFF Lemoore
31. NAVLEGSVBROFF Rota
32. NSC Puget Sound

(d) *$1,000 Authorities.*

33. NSC Charleston
34. NAS Kingsville
35. NAS Chase Field, Beeville
36. NAS Pensacola
37. NAS Brunswick
38. NAS Bermuda
39. NAS Meridian
40. NAF Sigonella
41. NAF Atsugi
42. NAVSTA Mayport
43. NAVSTA Adak

44. NAVSTA Keflavik
45. NAVSTA Midway
46. COMSUBLANT Norfolk
47. COMOCEANSYSLANT Norfolk
48. COMIDEASTFOR
49. COMFLEACTS Okinawa/NAF Kadena
50. NRMC Oakland
51. NAVPGSCOL Monterey
52. CBC Gulfport
53. NAVAIRTESTCEN Patuxent River
54. NAVAIRENGCEN Lakehurst
55. NAVORDFAC Sasebo
56. NTC Morocco
57. NAVCOMMSTA Harold E. Holt
58. NAVSUPPO La Maddalena
59. NAVSECGRUACT Misawa

(e) In addition to the foregoing, naval officers attached to the following commands have been designated $500-adjudicating-authorities by name by the Judge Advocate General by separate correspondence in accordance with § 751.24(a)(6). Some of the following commands hold an individual allotment from the Judge Advocate General, and others utilize a sub-allotment.

1. NSC Oakland,
2. NSC NFK,
3. NSC Pearl Harbor,
4. RESUPSHIP Pascagoula,
5. NSD, Guam,
6. NAVSCSCOL Athens,
7. NSD Subic Bay,
8. NAS Jacksonville,
9. NSD Yokusuka.

[43 FR 25428, June 13, 1978]

PART 752—ADMIRALTY CLAIMS

Sec.
752.1 Scope.
752.2 Organization.
752.3 Claims against the Navy.
752.4 Affirmative claims.
752.5 Salvage.

Authority: 5 U.S.C. 301; 10 U.S.C. 5031, 5148, and 7621-7623; 32 CFR 700.206 and 700.1202.

Source: 39 FR 9962, Mar. 15, 1974, unless otherwise noted.

Note: This Part 752 is derived from chapter XII of the Manual of the Judge Advocate General.

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property.

§ 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment, where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1970)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1970)).

(b) *Admiralty Division of the Office of the Judge Advocate General.* The Navy's admiralty-tort claims are handled in the Admiralty Division of the Office of the Judge Advocate General. In addition, there are stationed in several district law centers, and in certain other commands, judge advocates who are also trained admiralty officers, and they act locally in admiralty matters.

(c) *Mission and policy.* The primary mission of the Admiralty Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty-tort claims.* As indicated above, the Admiralty Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty-contract claims.* Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores.* Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts.* Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty Division and the Office of Counsel, MSC, as to how the incident should be handled.

§ 752.3 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 7622 (1970), as amended by Pub. L. 92-417, 86 Stat. 654, provides settlement authority for

> (1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy.

The limit on the Secretary's settlement authority is a payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $10,000. Under the Secretary's delegation, settlements not exceeding $10,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Commander in Chief, U.S. Naval Forces, Europe, and to Commander, Sixth Fleet, to pay admiralty claims against the Navy not exceeding $1,000, and to Commandant, TENTH Naval District, for damage to fishing equipment arising in Culebra-Vieques waters, not to exceed $1,000.

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over $10,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for executed releases. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of the appropriation "Claims, Department of Defense."

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

§ 752.4 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623 (1970), and is the reciprocal of 10 U.S.C. 7622 (1970), referred to in § 752.3.

(b) *Scope.* 10 U.S.C. 7623 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416 (1970)).

(d) *Litigation.* 10 U.S.C. 7623 does not apply to any claim where suit is filed. If the Admiralty Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

§ 752.5 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365 (1970). Prosecution of such claims is handled in the first instance by the Assistant Supervisor of Salvage, U.S. Navy, One World Trade Center, New York, NY 10048. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367 (1970).

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Sec.
755.1 Statutory authority.
755.2 Scope.
755.3 Claims not cognizable.
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755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.
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755.10 Effect of court-martial proceedings.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5031, and 5148; E.O. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 35 FR 13109, Aug. 18, 1970, unless otherwise noted.

NOTE: This Part 755 is Chapter X of the Manual of the Judge Advocate General of the Navy.

NOTE: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this Part 755 as "the UCMJ". The Manual for Courts-Martial, United States, 1969 (E.O. 11476 of June 19, 1969) is referred to in this Part 755 as "MCM 1969".

§ 755.1 Statutory authority.

This part outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces (Article 139, Uniform Code of Military Justice, 10 U.S.C. 939).

§ 755.2 Scope.

Claims for damage, loss, or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of Article 139, UCMJ only if such damage, loss, or destruction is caused by riotous conduct, acts of depredation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ are cognizable under Article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under Article 109 or any other article of the UCMJ. (See § 755.10.) Charges against pay under the regulations in this part shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene at the time the damages were sustained are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

§ 755.3 Claims not cognizable.

The following claims are not payable under this part.

(a) *Claims payable under other regulations:* Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of the general, personnel, or foreign claims regulations set forth in Parts 750 and 751 of this subchapter and Chapter XXII of the Manual of the Judge Advocate General, or under admiralty claims procedure set forth in Part 752 of this subchapter. No charge will be made under these regulations against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

(b) *Claims resulting from simple negligence:* Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

(c) *Claims of subrogees:* Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

(d) Claims for personal injury or death.

(e) *Acts or omissions within the scope of employment:* Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

(f) *Absence of riotous or violent conduct:* Claims arising from larceny, wrongful appropriation, forgery, or deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous or violent conduct; or claims for damages arising from breach of contract.

(g) *Government property:* Reimbursement for damage, loss, or destruction of property of the United States.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6028, Mar. 6, 1973, as amended at 45 FR 8600, Feb. 8, 1980]

§ 755.4 Limitations of applications.

(a) *Time limitations.* In order for a claim to be cognizable under Article 139, UCMJ, a complaint out of which such claim arises must have been made to military authority within 30 days of the date of the incident.

(b) *Aliens.* Claims of aliens under Article 139, UCMJ, in addition to the exclusionary limitations of the regulations in this part, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

(c) *Limitation of amount of assessment.* No assessment exceeding the amount of $250 will be made against the pay of any offender under the provisions of Article 139, UCMJ for any single act or incident.

(d) *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

(e) *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

§ 755.5 Complaint by injured party.

(a) *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of Article 139, UCMJ, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of Article 139, UCMJ, be considered the commanding officer of the offender. If the incident complained of occurred at a place remote from the command of the alleged offender, and the commanding officer of the alleged offender so requests, the commanding officer of the naval activity located nearest the place of the incident shall order an investigation of the matter as required by Article 139, UCMJ and the regulations in this part. Upon completion of such investigation, the record thereof shall be forwarded to the commanding officer who requested the investigation for action required by § 755.7. Where more than one offender or more than one command is involved, the matter shall be handled by a single investigation, if practicable. In this connection see Section 0107 of the

Manual of the Judge Advocate General and § 755.8 of this subchapter.

(b) *Advice to claimant.* The commanding officer who orders the investigation of the complaint shall fully advise the claimant by the most practicable means, that:

(1) In order for a claim to be cognizable under Article 139, UCMJ, the claimant must be within the provisions of § 750.50.

(2) A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of § 750.13 set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

(3) Such claim must be submitted to the investigating body as expeditiously as possible and not later than 30 days from the date of this advice.

(1 CFR 18.14, and Part 21, Subpart B)

[35 FR 13109, Aug. 18, 1970, as amended at 41 FR 26866, June 30, 1976; 45 FR 8600, Feb. 8, 1980]

§ 755.6 Investigation.

(a) *General.* The procedure for redress of injuries to property (Article 139, UCMJ) is accomplished by the use of a formal investigation or a court of inquiry. The claim is the subject of inquiry by either of these bodies, and the rules governing the appropriate type of investigation are applicable.

(b) *Fact-finding body.* The fact-finding body appointed to investigate a complaint under Article 139, UCMJ shall consist of from one to three commissioned officers. Subject to the provisions of the regulations in this part, pertinent portions of §§ 750.6 and 750.7 respecting matters to be ascertained in investigating property damage are applicable. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

(c) *Statutory requirements and powers.* Under the authority of Article 139, UCMJ, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See paragraph 115, MCM. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under Article 139, UCMJ, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the Article 139 claim. Witnesses before such investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received in evidence.

(d) *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See Subpart J of Part 719 of this subchapter. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such case, submit a signed statement in regard thereto or to the effect that he does not desire to make such a statement. If, by reason of unauthorized absence of other factors, the rights of a party cannot be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an Article 139 investigation, the identity of an offender is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation, and accorded his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not then been completed.

(e) *Measure of damages.* The inquiry or investigation is to be guided by the general claims regulations (Part 750 of this subchapter) in determining the measure of damages as a basis for recommending assessment.

(f) *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in these regulations pertaining to the validity of the claim under consideration and shall state its findings of fact and opinions as appropriate, as to the person or persons responsible for the damage concerning which the claim is filed. Using the appropriate measure of damages, it shall determine the amount of damage incurred by the property owner.

(g) *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party or parties. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

(h) *Consolidation of investigations.* A formal investigation conducted under Article 139, UCMJ may be combined with an investigation required for any other reason.

[35 FR 13109, Aug. 18, 1970, as amended at 41 FR 26866, June 30, 1976]

§ 755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.

(a) *Action by commanding officer.* When all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of Article 139, UCMJ and the regulations in this part. If he finds that the claim is within such provisions, he shall fix the amount to be assessed against the offender or offenders. Subject to the limitations of § 755.4, charges totaling the amount of damages assessed and approved shall be made in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no additional review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, shall be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, shall forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer either directing a charge against the pay of an offender or denying the claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid or that no members of the command were pecuniarily responsible shall be communicated promptly to the claimant.

(c) *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under Article 139, UCMJ shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender shall be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

§ 755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.

(a) *Action by common superior.* Where the offenders are members of different commands the investigation or investigations conducted under Article 139, UCMJ shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report shall be forwarded to such offender for his inspection and his statement. This statement may set forth the member's version of the incident or it may merely reflect the fact that he does not desire to avail himself of the opportunity. The statement shall be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. The common superior commander shall fix the amount, if any, to be assessed against the offender or offenders and direct the appropriate commanding officers to take action accordingly. See § 755.7 (b) and (c). The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

(b) *Forwarding to SECNAV(JAG).* Where it is not practicable or possible to carry out the procedure prescribed in paragraph (a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.9 Reconsideration.

In the absence of newly discovered evidence, an adjudication pursuant to the regulations in this part shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and forwarded with recommendations to the Judge Advocate General.

§ 755.10 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the UCMJ without regard to proceedings under these regulations. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damage is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the proceedings under Article 139, UCMJ, or approval or denial of a claim thereunder.

[36 FR 14740, Aug. 11, 1971]

PART 756—NONAPPROPRIATED FUND CLAIMS REGULATIONS

Sec.

756.1 General.
756.2 Notification.
756.3 Processing claims.
756.4 Payment of claims.
756.5 Claims by employees.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

SOURCE: 38 FR 6052, Mar. 6, 1973, unless otherwise noted.

§ 756.1 General.

(a) Non-appropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or perfunctory. Compare United States v. Holcombe, 277 F. 2d 143 (4th Cir. 1960) and Scott v. United States, 226 F. Supp. 846, (D. Ga. 1963). To the extent that sovereign immunity is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of non-appropriated-fund-activity claims. It is policy to pay these claims from non-appropriated funds and to process them primarily through non-appropriated-fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

(b) Claims arising out of the operation of non-appropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the non-appropriated-fund activity involved.

§ 756.2 Notification.

Many non-appropriated-fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether non-appropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of non-appropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability.

§ 756.3 Processing claims.

(a) *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from non-appropriated-fund activities is normally with the non-appropriated-fund activity and its insurer. The standard procedures described in Part 750 of this chapter for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

(b) *Negotiations.* (1) When a non-appropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the non-appropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the non-appropriated-fund activity, or its insurer, for payment from non-appropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the non-appropriated-fund activity not its insured is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

(c) *Denial.* Claims resulting from non-appropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a non-appropriated-fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court. Claimants shall be notified of a denial in accordance with § 750.7 of this chapter.

§ 756.4 Payment of claims.

(a) *Small claims.* Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

(b) *Other claims.* Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from non-appropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a non-appropriated-fund activity. In the event the non-appropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.5 Claims by employees.

(a) *Property.* Claims by employees of non-appropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Part 751 of this chapter and forwarded to the appropriate non-appropriated-fund activity for payment from nonappropriated funds.

(b) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950) was extended to provide for employees of non-appropriated-fund activities who suffered injury or death arising out of and in the course of their employment (5 U.S.C. 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 U.S.C. 8173).

(c) *Personal injury or death of foreign nationals employed outside of the Continental United States.* Employees who are not citizens or permanent residents, and who are employed outside of the Continental United States, are protected by private insurance of the non-appropriated-fund activity or by other arrangements (5 U.S.C. 8172). When a non-appropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Subpart A—Medical Care Claims

Sec.

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757.21 Joint regulations of the General Accounting Office and Department of Justice on Federal claims collection standards.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 952; 42 U.S.C. 2651-53; 32 CFR 700.206 and 700.1202.

SOURCE: 38 FR 6053, Mar. 6, 1973, unless otherwise noted.

Subpart A—Medical Care Claims

§ 757.1 Definitions.

For the purposes of this subpart:

(a) *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The Commandants of all naval districts not served by naval legal service offices and their district judge advocates;

(3) The Officers in Charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility.

(4) The Officers in Charge of U.S. Sending State Offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

(c) *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tort-feasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. 2651-53).

(e) *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

(f) *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claims.

[41 FR 26866, June 30, 1976]

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer-in-charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in § 757.5, may compromise or waive any claim not in excess of $20,000 and issued a release thereof.

(c) *Claims exceeding $20,000.* Claims in excess of $20,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

(d) *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

(e) *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of "Tolliver v. Shumate," 151 W. Va. 105, 150 S.E. 2d 579 (1966), and "United States v. Jones," 264 F. Supp. 11 (1967). The information contained on form NAVJAG 5890/13, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary, (such as where a patient was given leave, liberty, or was awaiting assignment to new duties) or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

(g) *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

[41 FR 26867, June 30, 1976]

§ 757.3 Report of care and treatment.

(a) *NAVJAG Form 5890/12.* NAVJAG Form 5890/12 (*see* Appendix section A-24-d)[1] shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases).

(b) *Computations.* NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c.[1] All computations by medical personnel and any necessary recomputations will be made pursuant to § 757.2(g).

(c) *Submission of NAVJAG Form 5890/12.* The NAVJAG Form 5890/12 shall be submitted to the action JAG designee at the following times:

(1) An "initial" submission of NAVJAG Form 5890/12 shall be made

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[1] Filed as part of original document.

as soon as practicable after the patient is admitted if it appears that inpatient care will last three or more days, or that more than 10 outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of NAVJAG Form 5890/12 shall be made every 4 months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form.

(d) *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final NAVJAG Form 5890/12 in all cases involving in-patient care. In addition, when Government care exceeds $1,000, the hospital should also provide a completed NAVJAG Form 5890/13 (*see* Appendix A-24-f).[1] On this form, the determination of "patient status" may be based on local hospital usage. If the hospital prefers, it may furnish in lieu of NAVJAG Form 5890/13 a statement by the treating physician (normally on a locally-prepared form) giving the date that necessary inpatient treatment was essentially completed, and the number of outpatient treatments that would have been required if the patient had been discharged on that date. Report control symbol JAG 5890-10 is assigned to this report.

(e) *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

(f) *Treatment of nonnaval personnel.* Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army:* Commanding general of the Army or comparable area commander in which the incident occurred;

(2) *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred;

(4) *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans' Administration:* Director of the Veterans' Administration Hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

(g) *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

(h) *Civilian medical care.* The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases).

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(i) *CHAMPUS cases.* CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colo. 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

(31 U.S.C. 952 and 42 U.S.C. 9651-53)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22262, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.4 Investigations.

(a) *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in Part 750 of this chapter. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed 3 inpatient days or 10 outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See § 757.3(f) for addresses of other departments and agencies.

(b) *Consolidation.* Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

(c) *Information for action JAG designee.* All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

§ 757.5 Determination, assertion, and collection of claims.

(a) *Determination and notice of claim.* Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

(b) *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(c) *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (i) Furnish the action JAG designee any pertinent information concerning the incident; (ii) notify the action JAG designee of any settlement offer from the third party or his insurer; and (iii) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

(d) *Pursuit of claims.* (1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by § 757.2(b). Before action is taken on a file, the action JAG designee shall determine:

(i) Whether the injured party has retained or intends to retain counsel;

(ii) Whether the tortfeasor denies liability and/or refuses to pay;

(iii) In cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(iv) Whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

(e) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the Government's claim as an item of special damages in their client's claim or suit. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees neither may be paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery.

(3) If the injured party, or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(f) *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in paragraphs (a) and (b) of this section, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by

the insurer in accordance with a state requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to ensure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States—*i.e.*, whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

(g) *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by paragraph (e) of this section, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out of pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

(h) *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

(31 U.S.C. 952 and 42 U.S.C. 9651-53)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22262, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.6 Medical records.

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See Part 720 of this chapter concerning certifications when necessary for litigation.

§ 757.7 Notice of claim.

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tort feasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

§ 757.8 Statistical reports.

Action JAG designees shall forward monthly reports to the Judge Advocate General setting forth the following information:

(a) The number of claims asserted during the month;

(b) The number of recoveries made during the month (in cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(c) The dollar amount of claims asserted during the month;

(d) The dollar amount of recoveries made during the month (including partial recoveries); and

(e) The total number of active claims on file at the end of the month.

Report Symbol JAG-5800-11 is assigned for this reporting requirement.

(1 CFR 18.14, and Part 21, Subpart B)

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974; 45 FR 8600, Feb. 8, 1980]

§ 757.9 Geographical limitations—single-service responsibility.

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See § 750.24 of this chapter for single-service responsibility.

§ 757.10 Rates for medical care provided in Federal hospitals.

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in appendix section A-24(c).[1]

§ 757.11 Single demand for medical care and property damage claims.

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

§ 757.12 Statute of limitations.

Pursuant to the provisions of 28 U.S.C. 2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

§ 757.13 Reference material.

The following aids and reference materials are contained in appendix section A-24:

(a) A-24-a.[1] Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act,

(b) A-24-b.[1] Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

(c) A-24-c.[1] Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

(d) A-24-d.[1] NAVJAG Form 5890/12, "Hospital and Medical Care 3rd Party Liability Case,"

(e) A-24-e.[1] Standard Form 96, "Notice of Claim,"

(f) A-24-f.[1] NAVJAG Form 5890/13, "Supplemental Statement for Hospital and Medical Care Third Party Liability Case."

(g) A-24-g.[1] Department of the Navy Promissory Note.

(h) A-24-h.[1] Sample report on property damage claims.

[39 FR 22263, June 21, 1974]

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[1] Filed as a part of original document.

Subpart B—Property Damage Claims

§ 757.14 Regulations concerning affirmative claims.

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (Subpart C of this Part). Department of Defense Directive 5515.11 of 10 December 1966 delegates to the Secretary of the Navy, and his designees, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

(31 U.S.C. 952 and 42 U.S.C. 9651-9653)

[39 FR 22263, June 21, 1974; as amended at 41 FR 26867, June 30, 1976]

§ 757.15 Pursuit, settlement, and termination of claims.

(a) *Authority to handle claims.* Subject to paragraph (b) of this section, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States.

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims); the Director, Litigation and Claims Division;

(2) The commandant or the district judge advocate of a naval district;

(3) The officer in command or the director of a Navy law center; and

(4) Overseas commands with a Navy or Marine Corps judge advocate attached.

(b) *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by paragraph (a) of this section should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Subpart C of this part).

(c) *Release.* The officers designated by paragraph (a) of this section are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974; 41 FR 26867, June 30, 1976]

§ 757.16 Collection of claims.

(a) *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

(b) *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

(c) *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages are paid or reimbursed by the Government in accordance with Joint Travel Regulations (Volume 1, paragraph M4405-1 and Volume 2, paragraph C6101-3), officers authorized to take collection action under this part shall endeavor to collect the amount of the Government's loss from any third-parties liable in tort. Collection action should not be directed at the personnel who rented the damaged vehicles. Collection efforts may be discontinued or claims compromised in accordance with the guidelines of Subpart C of this part.

[38 FR 6053, Mar. 6, 1973, as amended at 39 FR 22263, June 21, 1974]

§ 757.17 Repair of Government property by the tort-feasor.

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer-in-charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer-in-charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigate report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer-in-charge that the property has been satisfactorily repaired, and that all bills for repairs have been paid.

§ 757.18 Referral of cases to the Department of Justice or GAO.

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by Subpart C of this part) have been completed.

§ 757.19 Statute of limitations.

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. 2415(b). Uncollected affirmative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (*see* appendix section A-24-g).[1]

[39 FR 22263, June 21, 1974]

§ 757.20 Reports.

(a) The officers designated by § 757.15 (a)(2)-(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

(1) Number of claims asserted;
(2) Dollar amount of claims asserted;
(3) Number of claims collected;
(4) Dollar amount of claims collected.

Report control JAG 5890-3 is assigned to this report.

[39 FR 22263, June 21, 1974]

Subpart C—Joint Regulations on Claims Collection

§ 757.21 Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards.

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are found in 4 CFR Part 101 et seq.

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[1] Filed as part of original document.

SUBCHAPTER F—ISLANDS UNDER NAVY JURISDICTION

PART 761—NAVAL DEFENSIVE SEA AREAS; NAVAL AIRSPACE RESERVATIONS, AREAS UNDER NAVY ADMINISTRATION, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

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761.16 Notice of action.
761.17 Revocation.
761.18 Appeals.
761.19 Forms.

Subpart D—Additional Instructions

761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5031, 6011, 18 U.S.C. 2152. The text of Part 761 contains additional references, including Executive Orders.

SOURCE: 28 FR 13778, Dec. 18, 1963, unless otherwise noted.

Subpart A—Introduction

§ 761.1 Scope.

(a) This part provides regulations governing the entry of persons, ships, and aircraft into:

(1) Naval Defensive Sea Areas and Naval Airspace Reservations established by Executive order of the President (see § 761.3(a)).

(2) Areas placed under the Secretary of the Navy for administrative purposes by Executive order of the President (see § 761.3(b)).

(3) The Trust Territory of the Pacific Islands (see § 761.3(c)).

(b) The entry authorizations issued under the authority of this part do not supersede or eliminate the need for visas or other clearances or permits required by other law or regulation.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.2 Background and general policy.

(a) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this part, and military installations contiguous to or within the boundaries of defense areas, is subject to control as provided for by Executive order or other regulation. The object of controls over entry into naval defensive sea areas, naval airspace reservations, administrative areas, and the Trust Territory of the Pacific Islands, is to provide for the protection of military installations as well as other facilities, including the personnel, property, and equipment assigned to or located therein. Persons, ships, and aircraft are excluded unless and until they qualify for admission under the applicable Executive order or regulation.

(b) The control of entry into or movement within defense areas by persons, ships, or aircraft will be exercised so as to fully protect the physical security of, and insure the full effectiveness of, bases, stations, facilities and other installations within or contiguous to defense areas. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(c) This part will be administered so as to provide for the prompt processing of all applications and to insure uniformity of interpretation and application, insofar as changing conditions permit.

(d) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970]

§ 761.3 Authority.

(a) *Naval Defensive Sea Areas and Naval Airspace Reservations.* By Executive Orders, as amended, the President has reserved, set aside, and established the following Naval Defensive Sea Areas and Naval Airspace Reservations under the control of the Secretary of the Navy. Incorporated therein are provisions for the exercise of control by the Secretary over the entry of persons, ships, and aircraft into the areas so described. (See § 761.4(b) for delineation of areas where entry controls are suspended.)

(1) *Atlantic areas.* Guantanamo Bay Naval Defensive Sea Area; Guantanamo Bay Naval Airspace Reservation: Executive Order 8749 of May 1, 1941 (6 FR 2252; 3 CFR, 1943 Cum. Supp., p. 931).

(2) *Pacific areas.* (i) Honolulu Defensive Sea Area: Executive Order 8987 of December 20, 1941 (6 FR 6675; 3 CFR, 1943 Cum. Supp., p. 1048).

(ii) Kaneohe Bay Naval Defensive Sea Area; Kaneohe Bay Naval Airspace Reservation: Executive Order 8681 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 893).

(iii) Pearl Harbor Defensive Sea Area: Executive Order 8143 of May 26, 1939 (4 FR 2179; 3 CFR, 1943 Cum. Supp., p. 504).

(iv) Johnston Island Naval Defensive Sea Area; Johnston Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(v) Kingman Reef Naval Defensive Sea Area; Kingman Reef Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vi) Midway Island Naval Defensive Sea Area; Midway Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1947 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(vii) Wake Island Naval Defensive Sea Area; Wake Island Naval Airspace Reservation: Executive Order 8682 of February 14, 1941 (6 FR 1015; 3 CFR, 1943 Cum. Supp., p. 894) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919) and Executive Order 9881 of August 4, 1917 (12 FR 5325; 3 CFR, 1943-1948 Comp., p. 662).

(viii) Kiska Island Naval Defensive Sea Area; Kiska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919).

(ix) Kodiak Naval Defensive Sea Area: Executive Order 8717 of March 22, 1941 (6 FR 1621; 3 CFR, 1943 Cum. Supp., p. 915). Kodiak Naval Airspace Reservation: Executive Order 8597 of November 18, 1940 (5 FR 4559; 3 CFR, 1943 Cum. Supp., p. 837) as amended by Executive Order 9720 of May 8, 1946 (11 FR 5105; 3 CFR, 1943-1948 Comp., p. 527).

(x) Unalaska Island Naval Defensive Sea Area, Unalaska Island Naval Airspace Reservation: Executive Order 8680 of February 14, 1941 (6 FR 1014; 3 CFR, 1943 Cum. Supp., p. 892) as amended by Executive Order 8729 of April 2, 1941 (6 FR 1791; 3 CFR, 1943 Cum. Supp., p. 919). See § 761.4(d) for delineation of areas where entry controls are suspended.

(b) *Administrative areas.* By Executive orders, as amended, the President has reserved, set aside, and placed under the control and jurisdiction of the Secretary of the Navy for administrative purposes the following named areas including their appurtenant reefs and territorial waters:

(1) Johnston Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(2) Kingman Reef—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(3) Midway Island—Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(4) Sand Island—Executive Order 6935 of December 29, 1934 as amended by Executive Order 11048 of September 4, 1962 (27 FR 8851; 3 CFR, 1962 Supp., p. 241).

(c) *Trust Territory of the Pacific Islands.* The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of a trusteeship agreement with the United Nations. Under Executive Order 11021 of May 7, 1962 (27 FR 4409; 3 CFR, 1959-1963 Comp., p. 600), the Secretary of the Interior is charged with responsibility for administration of the civil government of the Trust Territory of the Pacific Islands. Under July 1, 1963 amendment two agreements effective July 1, 1951 and July 1, 1962 between the Department of the Navy and the Department of the Interior concerning responsibility for administration of the Government of the Trust Territory, the entry of individuals, ships and aircraft into the Trust Territory (other than areas under the control of the Department of the Army (Kwajalein Atoll) and of the Defense Nuclear Agency (Eniwetok Atoll) see § 761.4) is controlled by the High Commissioner of the Trust Territory and the Department of the Navy as follows:

(1) Entry of U.S. citizens and nationals and citizens of the Trust Territory, into areas of the Trust Territory other than those areas under control of the Department of the Army and the Defense Nuclear Agency as outlined above, shall be controlled by the High Commissioner.

(2) All other persons: Applications for entry into the Trust Territory except for those areas under control of the Department of the Army or of the Defense Nuclear Agency, of all persons who are not U.S. citizens, U.S. nationals, or who are not citizens of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided,* That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases (with the exception of alien individuals who possess a valid U.S. visa and seek admission to the Trust Territory for a period of 30 days or less for the purpose of tourism) information on the applicants for its consideration and comment, granting thereby the Department of the Navy the right to object to the issuance of an authorization.

(3) Ships and aircraft: (i) The entry of ships and aircraft, other than U.S. public ships and aircraft, documented under either the laws of the United States or the laws of the Trust Territory into areas of the Trust Territory, excepting those areas where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll), shall be controlled solely by the High Commissioner.

(ii) Applications for entry into the Trust Territory, except for those areas under military control, of ships and aircraft not documented under the laws of the United States or the laws of the Trust Territory, shall be made to the High Commissioner for processing in accordance with the laws and regulations of the Trust Territory: *Provided,* That prior to the issuance of an authorization to enter the Trust Territory, the High Commissioner shall provide the Department of the Navy in all cases with information on the applicants for its consideration and comment, granting thereby the right of the Department of the Navy to object to the issuance of an authorization.

(d) [Reserved]

(e) *Exercise of authority.* The authority of the Secretary of the Navy to control entry of ships, planes, and persons into the areas listed is exercised through the Chief of Naval Operations and certain of his subordinates as prescribed in this part.

(f) *Penalties.* Penalties are provided by law: (1) For violations of orders or regulations governing persons or ships within the limits of defensive sea areas (62 Stat. 799, 18 U.S.C. 2152); (2) for entering military, naval or Coast Guard property for prohibited purposes or after removal or exclusion therefrom by proper authority (62 Stat. 765; 18 U.S.C. 1382); (3) for violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any department or agency of which said department or agency consists, or any officer of employee of said department or agency (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 20 August 1954 (19 FR 5446)); and (4) for knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10008, June 18, 1970; 36 FR 21889, Nov. 17, 1971; 41 FR 28957, July 14, 1976]

§ 761.4 Special provisions.

(a) Entry into islands in the Kwajalein Atoll under military jurisdiction is controlled by the Department of the Army. Inquiries concerning entries into islands under military control in the Kwajalein Atoll should be directed to: National Range Commander, U.S. Army Safeguard System Command, ATTN: SSC-R, P.O. Box 1500, Huntsville, AL 35807.

(b) Entry into Eniwetok Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Eniwetok Atoll should be directed to: Commander, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115.

(c) Entry into Johnston Atoll is controlled by the Defense Nuclear Agency. Inquiries concerning entries into Johnston Atoll should be directed to: Commander, Johnston Atoll (FCDNA), APO San Francisco, CA 96305.

(d) *Suspension of restrictions.* Restrictions imposed under the authority of the above cited Executive Orders on entry into the following Naval Defensive Sea Areas and Naval Airspace Reservations and Administrative Areas have been suspended subject to reinstatement without notice at any time when the purposes of national defense may require.

(1) All Naval Airspace Reservations, except the Guantanamo Bay Naval Airspace Reservation

(2) Honolulu Defensive Sea Area.

(3) Kiska Island Naval Defensive Sea Area.

(4) Kodiak Island Naval Defensive Sea Area.

(5) Unalaska Island Naval Defensive Sea Area.

(6) Wake Island Naval Defensive Sea Area except for entry of foreign flag ships and foreign nationals.

(7) The portion of Kaneohe Defensive Sea Area lying beyond a 500 yard buffer zone around the perimeter of the Kaneohe Marine Corps Air Station (Mokapu Peninsula) and eastward therefrom to Kapoho Point, Oahu.

(e) Suspension of restrictions on entry into a naval airspace reservation, naval defensive sea area, or naval administrative area, does not affect the authority of a commanding officer or other appropriate commander to control entry into or passage through any base, station, or other installation or area, including port or harbor facilities under Navy control.

[41 FR 28957, July 14, 1976]

§ 761.5 Definitions.

(a) *Defense area.* A naval defensive sea area, naval airspace reservation, or naval administrative area established by Executive order of the President.

(b) *Department of Defense.* The Department of Defense, including the Departments of the Army, Navy, and Air Force.

(c) *Entry authorization.* A document which authorizes a ship, aircraft, or person to enter a defense area.

(d) *Entry Control Commander.* A commander empowered to issue entry authorizations for one or more defense areas (see § 761.9).

(e) *Excluded person.* A person who does not hold a currently valid entry authorization for the area concerned and who has been notified by an Entry Control Commander that authority for him to enter any defense area has been denied, suspended or revoked.

(f) *Foreign nationals.* Persons who are not citizens or nationals of the United States.

(g) *Military installation.* A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(h) *Public vessel or aircraft.* A ship or aircraft owned by or belonging to a government and not engaged in commercial activity.

(i) *Territorial sea*—(1) *Trust Territory.* In accordance with Title 19, section 101(3), of the Trust Territory Code "* * * that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such reef system, the distance to be measured from the low water line of any island, islet, atoll, reef, or rocks within the jurisdiction of the Trust Territory."

(2) *Other areas.* That part of the sea included within the envelope of all arcs of circles having a radius of three marine miles with centers on the low water line of the coast. For the purpose of this definition, the term "coast" includes the coasts of islands, islets, rocks, atolls, reefs and other areas of land permanently above the high water mark.

(j) *Trust Territory Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory.

(k) *U.S. Registry.* Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(l) *U.S. Armed Forces.* Military personnel of the Department of Defense, the Departments of the Army, Navy, Air Force, and the United States Coast Guard.

[28 FR 13778, Dec. 18, 1963, as amended at 35 FR 10009, June 18, 1970; 41 FR 28958, July 14, 1976]

Subpart B—Criteria and Basic Controls

§ 761.6 Criteria.

(a) *General.* (1) Entry authorizations may be issued only after an Entry Control Commander, or a duly authorized subordinate acting in his behalf, has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability, or effectiveness of any military installation located within or contiguous to a defense area. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the personal history, character and present or past associates of the individuals involved, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft or the individual or individuals involved impose or might reasonably be expected to impose on the related base complex.

(2) Requests for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of national defense.

(b) *Adverse.* Substantial evidence of any of the following shall preclude the granting of entry authorization except with the specific approval of the Chief of Naval Operations in each case:

(1) Prior noncompliance with entry control regulations or failure to observe terms under which any entry authorization may have been granted; [1]

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[1] The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

(2) Willfully furnishing false, incomplete, or misleading information in an application for an entry authorization;[1]

(3) Advocacy of the overthrow or alteration of the Government of the United States by unconstitutional means;

(4) Commission of, or attempt or preparation to commit, an act of espionage, sabotage, sedition, or treason, or conspiring with or aiding or abetting another to commit such an act;

(5) Performing, or attempting to perform, duties, or otherwise acting so as to serve the interest of another government to the detriment of the United States;

(6) Deliberate unauthorized disclosure of classified defense information;

(7) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means;

(8) Serious mental irresponsibility evidenced by having been adjudged insane, or mentally irresponsible, or an incompetent, or a chronic alcoholic, or treated for serious mental or neurological disorders or for chronic alcoholism, without evidence of cure;[1]

(9) Conviction of any of the following offenses under circumstances indicative of a criminal tendency potentially dangerous to the security of a strategic area containing military establishments; arson, unlawful trafficking in drugs, murder, kidnaping, blackmail, or sex offenses involving minors or perversion.

(10) Chronic alcoholism or addiction to the use of narcotic drugs without adequate evidence of rehabilitation;[1]

(11) Illegal presence in the United States, its territories or possessions, having been finally subject to deportation order, or voluntary departure in lieu of deportation order, by the United States Immigration and Naturalization Service;[1]

(12) Being the subject of proceedings for deportation or voluntary departure in lieu of deportation for any reasons which have not been determined in the applicant's favor;[1]

(13) Conviction of larceny of property of the United States, willful injury to or destruction of property of the United States, fraudulent enlistment, impersonation of a commissioned officer of the United States or any state or territory thereof, or any offense involving moral turpitude, except offenses, which, in the jurisdiction within which the conviction was obtained, are punishable by imprisonment for not more than one year or a fine of not more than one thousand dollars.[1]

(c) *Aliens.* (1) Entry of aliens for employment or residence in an area entirely within the borders of a defense area is not authorized except when such entry would serve the interests of National Defense, and then only for specified periods and under prescribed conditions.

(2) Entry of aliens for any purpose into areas over which the United States exercises sovereignty is further subject to requirements imposed by law for the obtaining of a United States visa. Naval authorization for entry into areas covered by this part will not be issued to foreign nationals for purposes, places, or periods of time in excess of those stipulated in the visa.

(3) Alien spouses and bona fide dependents of U.S. citizen employees of the United States may, if otherwise qualified, be granted entry authorization so long as the U.S. citizen sponsor or principal remains on duty or resident within the defense area.

(d) *Renewals.* Entry authorizations having been granted and utilized may be extended or renewed upon request at the expiration of the period for which the entry was originally authorized or extended, provided the justification for remaining in the area or for making a reentry meets the criteria set forth in this part. It shall be the responsibility of every applicant to depart the defense area for which entry was authorized upon expiration of the time prescribed in the authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence of violation of this part and may result in denial of future authorizations.

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[1] The criteria so marked are applicable only to those applications concerning entry into areas under military cognizance.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

§ 761.7 Basic controls.

(a) *General.* Except for such persons, ship, or aircraft as are issued an authorization to enter by an Entry Control Commander:

(1) No person, except persons aboard public vessels or aircraft of the United States, shall enter any defense area.

(2) No vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.

(3) No aircraft, except public aircraft of the United States, shall be navigated within any naval airspace reservation of the airspace over other defense areas.

(b) *Excluded persons*—(1) *Entry prohibited.* Excluded persons, as defined in § 761.5(e), are prohibited from entering any defense area. In a bona fide emergency which requires an excluded person's presence in or transit through a military installation which is also a defense area, the commanding officer of the installation may grant permission to enter or transit subject to such restrictions as may be imposed by regulation or which may, in his discretion, be required.

(2) *Carrying prohibited.* Except in a bona fide emergency and after being authorized by the appropriate local authority, no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person, as defined in this part, as passenger, officer or crew member.

(c) *Control of violators.* No commanding officer of a military installation shall permit any ship or aircraft which has entered the limits of his command by passing through a defense area without authorization to land, except in emergency, or, if permitted to land, to disembark passengers or cargo except as authorized by the appropriate Entry Control Commander. Commanding officers will take appropriate action to apprehend violators who come within their jurisdiction and request disposition instructions from the appropriate Entry Control Commander.

(d) *Trust Territory.* An authorization from the High Commissioner is required for all persons desiring to enter the Trust Territory, except for those areas under military jurisdiction where entry is controlled by the Department of the Army (Kwajalein Atoll) and the Defense Nuclear Agency (Eniwetok Atoll).

(e) *Military areas.* Entries authorized under this Instruction do not affect the authority of a commanding officer or other appropriate commander to impose and enforce proper regulations pertaining to movement into or within naval stations or other military installations.

(f) *Waiver prohibited.* No officer of the U.S. Armed Forces, except as authorized in writing by the Chief of Naval Operations, has authority to waive the requirements of this part, and any waiver must be in writing and signed by an authorized person.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971; 41 FR 28958, July 14, 1976]

Subpart C—Entry Authorization

§ 761.8 General.

(a) As indicated in § 761.7(a), certain persons, ships, and aircraft must be specifically authorized under the provisions of this part to enter defense areas.

(b) When entering or transiting a defense area each person, ship, or aircraft must have a valid authorization or satisfactory evidence thereof.

§ 761.9 Entry Control Commanders.

The following commanders are designated Entry Control Commanders with authority to approve or disapprove individual entry authorizations for persons, ships, or aircraft as indicated (Commander Seventeenth Coast Guard District has been designated an Entry Control Commander by the authority of the Commandant, U.S. Coast Guard and Commander, Western Area, U.S. Coast Guard);

(a) *Chief of Naval Operations.* Authorization for all persons, ships, or aircraft to enter all defense areas.

(b) *Commander in Chief, U.S. Atlantic Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Atlantic.

(c) *Commander in Chief, U.S. Pacific Fleet.* Authorization for all persons, ships, or aircraft to enter defense areas in the Pacific.

(d) *Commander U.S. Naval Forces Caribbean.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation. (This authority delegated to Commander U.S. Naval Base, Guantanamo Bay.)

(e) *Commander U.S. Naval Base, Guantanamo Bay.* Authorization for all persons, ships, and aircraft to enter the Guantanamo Bay Naval Defensive Sea Area and the Guantanamo Naval Airspace Reservation.

(f) *Commander Third Fleet.* Authorization for U.S. citizens and U.S. registered private vessels to enter Midway Island, Kingman Reef, Kaneohe Bay Naval Defensive Sea Area, Pearl Harbor Defensive Sea Area and Filipino workers employed by U.S. contractors to enter Wake Island.

(g) *Commander U.S. Naval Forces, Marianas.* Authorization in conjunction with the High Commissioner, for non-U.S. citizens, ships, or aircraft documented under laws other than those of the United States or the Trust Territory to enter those portions of the Trust Territory where entry is not controlled by the Department of the Army or the Defense Nuclear Agency.

(h) *Senior naval commander in defense area.* Emergency authorization for persons, ships, or aircraft in cases of emergency or distress. In all cases the Chief of Naval Operations, and as appropriate, the Commander in Chief, U.S. Atlantic Fleet or the Commander in Chief, U.S. Pacific Fleet, and other interested commands, shall be informed immediately of the nature of the emergency, and action taken.

(i) *U.S. Coast Guard.* The U.S. Coast Guard regulates the movement of shipping within the Honolulu Harbor under the authority of Executive Orders 10173 and 10289; such shipping is considered to be under U.S. authorized supervision within the meaning of Executive Order 8987. The Commandant, Fourteenth Naval District, as representative of the Secretary of the Navy, retains responsibility for security of the Honolulu Defensive Sea Area, as required by naval interest, and, as such, issues amplifying instructions relating to the Honolulu Defensive Sea Area.

[41 FR 28958, July 14, 1976]

§ 761.10 Persons; group authorizations.

Persons in the following categories, except those persons who have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation.

(b) Military members of the U.S. Armed Forces or U.S. civil service employees of the Department of Defense when traveling on official orders.

(c) U.S. ambassadors, cabinet members, elected U.S. Government officers and U.S. citizen civil service employees of the U.S. Government traveling on official orders on U.S. Government business may enter defense areas as required by their orders.

(d) Dependents of military members of the U.S. Armed Forces and U.S. citizen dependents of U.S. civil service employees traveling on official orders and entering for purposes of joining a principal permanently stationed in an area covered by this part.

(e) U.S. Navy Technicians, U.S. Army Contract Technicians, or U.S. Air Force Contract Technicians, who are traveling on official (does not include invitational) travel orders on U.S. Government business, may enter defense areas as specifically required by such orders.

(f) [Reserved]

(g) Individuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official U.S. Government authorization to enter an area covered by this part.

(h) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic vessels authorized to enter areas covered by this part. This does not include an authorization to disembark at a port contiguous to or within the areas covered in this part. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the particular port.

(i) Through passengers and bona fide regularly employed crew members, unless otherwise excluded, on nonpublic aircraft authorized to enter areas covered by this part. Such persons are subject to local regulations governing entry into or movement within military air stations or facilities. Application for authorization to disembark may be submitted to an Entry Control Commander having jurisdiction over the air facility.

(j) U.S. citizen news correspondents and photographers when properly accredited by the Department of Defense to enter areas covered by this part except that special authorization is required to enter the restricted areas listed in § 761.4(a).

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.11 Persons: Individual authorizations.

(a) *Application; filing.* Applications for authorization to enter defense areas shall be filed with one of the following:

(1) Chief of Naval Operations.

(2) Commander in Chief, U.S. Atlantic Fleet.

(3) Commander in Chief, U.S. Pacific Fleet.

(4) Any Naval Sea Frontier Commander.

(5) Any Naval Fleet or Force Commander.

(6) Any Naval District Commandant.

(7) Any Naval Attache. The Commander or Attache with whom the application is filed is responsible for taking such action on the application as he may be empowered to do or for forwarding the application to the nearest Entry Control Commander authorized by this part to take action thereon. Applications received in the United States and those received indicating that the applicant has resided in the United States for the major portion of ten years immediately prior to date of request will normally be forwarded to the Chief of Naval Operations for action. In all cases where the forwarding activity has information regarding the applicant or his employer, appropriate comment and/or recommendation for disposition will be included in the forwarding letter.

(b) *Form.* (1) Applications for entry authorizations will be made on the standard form Statement of Personal History, DD 398, which is available at most military installations. In addition to the information required by the form, an entry application shall include the following additional information under Item 20, "Remarks":

"21. Purpose of proposed visit: (Detailed statement including names of principal persons, firms, or establishments to be visited)

"22. Proposed duration of visit:

"23. Estimated date of arrival:

"24. Address to which authorization should be mailed:"

In the event that a DD 398 form is not available, a locally produced form containing identical information including the certification and signature of applicant and witness may be utilized.

(2) Incomplete forms will be returned for completion.

(3) When time is of the essence, emergency applications may be forwarded by message to the appropriate Entry Control Commander. Such messages shall include the following:

(i) Name of applicant.

(ii) Date and place of birth.

(iii) Citizenship.

(iv) Residence for last ten (10) years.

(v) Employers and their addresses for last ten (10) years.

(vi) Results of Local Agency Check, if pertinent.

(vii) Place to be entered and date of entry.

(viii) Purpose of entry and duration of stay.

(ix) Comments and/or recommendations of forwarding officer as appropriate.

(x) A statement that a completed DD 398 or appropriate substitute has been mailed prior to the sending of the message.

(c) *Processing.* The Entry Control Commander empowered to issue entry authorizations shall upon receipt of an application take the following action:

(1) Initiate or conduct such investigation as may be required to establish facts upon which to make a determination that the entry of the applicant at the time and for the purpose indicated is or is not in accordance with the criteria set forth in § 761.6.

(2) Request additional information from the applicant if required, or

(3) Issue an entry authorization as requested or modified as circumstances require, or

(4) Deny the request and advise the applicant of his right to appeal, or,

(5) Forward the application to the next superior in command together with a statement of the investigation conducted and the reason for forwarding and comments or recommendations as appropriate.

(d) *Authorizations.* Entry authorizations will state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization. Authorizations to enter and re-enter may be issued to resident U.S. citizens and be valid for a specified time not to exceed two years. Authorizations may be issued to U.S. citizens residing abroad and to aliens to enter and re-enter for a specified period of time required to accomplish the purpose for which the authorization was issued not to exceed one year.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28958, July 14, 1976]

§ 761.12 Ships: Group authorizations.

Ships or other craft in the following categories, except those ships which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorizations:

(a) U.S. Public vessels, to enter all defense areas.

(b) U.S. private vessels which are: (1) Under charter to the Department of Defense (including the Military Sealift Command), or (2) operating under a contract or charter with the Department of Defense providing for the employment of such vessels, or (3) routed by a Naval Control of Shipping Office, or (4) employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract and whose crews carry individual entry clearances, to enter defense areas as authorized by controlling Defense Department agency.

(c) [Reserved]

(d) Privately owned local craft, registered with and licensed by appropriate local U.S. Government authorities, and owned and operated by local inhabitants who have been granted an authorization to enter the local defense area at the discretion of the local commanders.

(e) Foreign flag ships traveling on diplomatic or other special clearance or for which special arrangements have been made under international agreements or treaties.

(f) Ships operating under a group authorization issued by the Chief of Naval Operations.

(g) Ships in distress, subject to local clearances and control by senior officer present.

[28 FR 13778, Dec. 18, 1963, as amended at 36 FR 21890, Nov. 17, 1971]

§ 761.13 Ships: Individual authorizations.

(a) *Applications; form; filing.* Applications for authorization to navigate ships within the limits of defense areas shall be filed with the cognizant Entry Control Commander by letter or telegram including the following information and any additional information that may be relative to the proposed operation:

(1) Name of ship.

(2) Place of registry and registry number.

(3) Name, nationality and address of operator.

(4) Name, nationality and address of owner.

(5) Gross tonnage of ship.

(6) Nationality and numbers of officers and crew (include crewlist when practicable).

(7) Number of passengers (include list when practicable).

(8) Last port of call prior to entry into area for which clearance is requested.

(9) Purpose of visit.

(10) Proposed date of entry and estimated duration of stay.

(b) *Processing.* Authorization for single entries or for multiple entries for a period not to exceed one year may be granted or denied by an Entry Control Commander. Authorizations for multiple entries for a period to exceed one year or for special group entries must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

§ 761.14 Aircraft: Group authorizations.

Aircraft in the following categories, except those aircraft which have been denied individual authorization or have had a prior authorization revoked, may enter the defense areas indicated without individual authorization:

(a) U.S. public aircraft to enter all defense areas.

(b) U.S. private aircraft which are under charter to the Department of Defense (including the Military Airlift Command), or operating under a contract with the Department of Defense providing for the employment of such aircraft to overfly U.S. island positions to enter defense areas as authorized by controlling Defense Department agency. If landing at U.S. military facilities is required, see § 761.15(a).

(c) Foreign flag aircraft for which special arrangements have been made under international agreements or treaties.

(d) Aircraft operated by companies authorized to utilize naval facilities in defense areas for regular commercial activity, to enter defense areas associated therewith. For landing clearance at U.S. military facilities, see § 761.15(a).

(e) Any aircraft in distress, subject to local clearance and control by senior officer present.

[41 FR 28958, July 14, 1976]

§ 761.15 Aircraft: Individual authorizations.

(a) *Special procedures.* In addition to the entry authorization to enter or navigate within the defense area concerned, certain special procedures must be followed by aircraft:

(1) If landing at U.S. naval aviation facilities, an Aviation Facility License must be obtained, in accordance with Secretary of the Navy Instruction 3770.1B, Use of Department of the Navy aviation facilities by other than United States Department of Defense aircraft.

(2) If landing at U.S. Air Force aviation facilities, a Civil Aircraft Landing Permit must be obtained, in accordance with Department of the Airforce Regulation 55-20, Use of United States Air Force installations by other than United States Department of Defense aircraft.

(3) Foreign public aircraft must obtain diplomatic clearance or clearance under applicable special agreements or treaties.

(b) *Application; Form; Filing.* Applications for authorization to navigate aircraft within the limits of defense areas shall be made by letter or telegram addressed to the appropriate entry control commander as indicated in § 761.9 with information copies to the Chief of Naval Operations, Commander in Chief, U.S. Atlantic (or Pacific) Fleet, as appropriate, and other local commanders who are known to be concerned. Applications shall include the following:

(1) Type and serial number of aircraft (the number of aircraft in flight if a mass movement is involved), nationality and name of registered owner.

(2) Name and rank of senior pilot.

*(3) Number in crew.

*(4) Number of passengers and whether military or civilian; include name (and rank) of distinguished passengers.

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*See "Note" to this paragraph.

(5) Purpose of flight.

(6) Plan of flight route, including:

(i) Point of origin of flight and its destination.

(ii) Estimated date and times of arrival and departure at all airspaces covered by this Part 761 including stops within the Trust Territory, when pertinent.

(7) Radio call signs of aircraft and radio frequencies available.

(8) Whether cameras are to be carried and whether they will be used.

*(9) Whether arms are to be carried.

*(10) Whether authorization to land as indicated in § 761.15(a) has been obtained.

NOTE: Information on those items marked with an asterisk (*) need not be reported when the aircraft will only overfly the areas covered by this part.

(c) *Processing.* Authorization for individual entries or for multiple entries for a period not to exceed three months may be granted by an Entry Control Commander. Authorizations for multiple entries over a period to exceed three months and applications for group authorizations must be forwarded to the Chief of Naval Operations with appropriate comments and recommendations.

[41 FR 28958, July 14, 1976]

§ 761.16 Notice of action.

All applicants will be kept advised of action being taken relative to the processing of applications. Individuals whose applications cannot be processed promptly (usually within ten working days) or whose applications must be forwarded to another office for processing will be notified of the anticipated delay and advised of the approximate time when action may be expected to be taken. Under no circumstances will a notice of disapproval include a statement of the reason therefor. Copies of all notices will be distributed to commands and Entry Control Commanders concerned. Copies of all notices of disapproval will be mailed to the Chief of Naval Operations concurrently with the mailing to the applicant.

§ 761.17 Revocation.

Entry authorizations will be revoked only by an Entry Control Commander upon being advised of the discovery of information which would have been ground for denial of the initial request. Such a revocation will be confirmed in writing to the holder of an entry authorization. No reason for revocation of the entry authorization will be given. When an entry authorization is revoked, a one-way permit will be issued as appropriate, to permit the ship, aircraft, or person to transit the defense area in order to depart from a contiguous area.

§ 761.18 Appeals.

(a) Appeals may be filed with the Entry Control Commander who issued the denial or revocation. It shall contain a complete statement of the purpose of the proposed entry and a statement of reasons why the entry should be authorized, including a showing that the entry will be consistent with the purposes of national defense.

(b) Appeal letters shall be forwarded promptly to the next superior Entry Control Commander with an endorsement setting forth the reasons for the denial or revocation and a recommendation as to the action to be taken by the superior.

(c) The superior may act on the appeal and notify the applicant of the decision, or he may forward the appeal to the next superior and notify the applicant of this referral.

[28 FR 13778, Dec. 18, 1963, as amended at 41 FR 28959, July 14, 1976]

§ 761.19 Forms.

The following forms shall be used in connection with the processing of applications for authorization to enter defense areas and for revocation of authorizations as indicated:

(a) *Application.* Statement of Personal History (Form DD 398, Stock Number 0102-004-220) may be obtained from NAVPUBFORMCEN, Building 26, 5801 Tabor Ave., Philadelphia, PA 19120.

(b) *Entry authorization.* (1) Defense Area Entry Authorization (OPNAV-Form 4600-2 (Rev. 5-59) may be obtained from Office of the Chief of

Naval Operations (OP-09B33), Navy Department, Washington, DC 20350.

(2) Letter or message authorization.

(c) *Disapproval of request for entry authorization.*

MY DEAR ————: Your application of ——— has been reviewed and we regret to advise you that the requested authorization for ———— to enter ———— is not granted as the entry at this time for the purpose stated is not considered to be in the interest of national defense.

The application may be resubmitted again in six months at which time it will be reconsidered in the light of then existing circumstances.

If you desire to appeal this decision, you may do so by submitting a letter to this office setting forth in full why you consider that the granting of the application would be in the interest of national defense and any other information that you believe will be of value of this person considering the appeal. Your letter will be forwarded to the appropriate authority for review and you will be advised in due course of his determination.

Sincerely yours,

(d) *Revocation of entry authorization.*

MY DEAR ————: This is to notify you that entry authorization to enter ———— granted by (issuing activity) on ——— is hereby revoked effective this date.

Sincerely yours,

[41 FR 28959, July 14, 1976]

Subpart D—Additional Instructions

§ 761.20 Additional regulations governing persons and vessels in Naval Defensive Sea Areas.

(a) By virtue of the authority vested in the President by section 44 of the United States Criminal Code, as amended and reenacted in 18 U.S.C. 2152, the President has prescribed the following additional regulations in Executive Order 9275 of November 23, 1942 (7 FR 9767; 1943 Cum. Supp. p. 1227) to govern persons and vessels within the limits of defensive sea areas theretofore or thereafter established.

(1) No person shall have in his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the Act approved June 25, 1942 (Pub. L. 627, 77th Congress), as amended (50 U.S.C. App. 781-785), and the regulations promulgated thereunder (7 FR 7307; 32 CFR 765.19(b)).

(2) It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by Executive Order 9275, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

(3) There shall be prominently displayed on board all vessels, except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the regulations prescribed in Executive Order 9275.

(4) Any person violating section 1 of Executive Order 9275 (restated in paragraph (a)(1) of this section) shall be liable to prosecution as provided in section 44 of the Criminal Code as amended and reenacted in 18 U.S.C. 2152.

(b) The regulations stated in paragraph (a) of this section are not a limitation on prosecution under any other statute that may have been violated by acts or omissions prohibited by Executive Order 9275.

PART 762—MIDWAY ISLANDS CODE

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AUTHORITY: Sec. 48, Pub. L. 86-624, 74 Stat. 424; 3 U.S.C. 301: E.O. 11048, 3 CFR 1959—1963 Comp., p. 632 (1962).

SOURCE: 41 FR 29672, July 19, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 762 appear at 46 FR 18313, Mar. 24, 1981, and at 51 FR 22283, June 19, 1986.

Subpart A—General

§ 762.1 Applicability.

(a) The local criminal and civil laws of the Midway Islands consist of this part, the provisions of the laws of the State of Hawaii adopted pursuant to § 762.16(a) and § 762.112(a), applicable provisions of the laws of the United States, and those laws made applicable under the special maritime jurisdiction contained in the Act of June 15, 1950 (ch. 253, 64 Stat. 217).

(b) For the purposes of this part, the Midway Islands include all public lands on, and all territorial waters and the contiguous zone adjacent to or surrounding, the Midway Islands, Hawaiian Group, between the parallels of 28°5′ and 28°25′ North Latitude, and between the meridians of 177°10′ and 177°30′ West Longitude, as were placed under the jurisdiction and control of the Navy Department by the provisions of Executive Order No. 199-A of January 20, 1903, as superseded by Executive Order No. 11048 of September 5, 1962.

§ 762.3 Purpose.

The purpose of this Part 762 is to provide:

(a) For the civil administration of the Midway Islands;

(b) For vesting powers and duties in appropriate officers of the United States for the civil administration of the Midway Islands, including judicial and executive functions;

(c) Certain criminal provisions applicable to the Midway Islands not otherwise provided for, and penalties for their violations;

(d) A judicial system for the Midway Islands not otherwise provided for; and

(e) Certain civil laws for the Midway Islands not otherwise provided for.

§ 762.4 Scope.

(a) This part is applicable to all civilian and nonmilitary persons, and to all military personnel for matters involving civil administration, civil law, or criminal offenses not otherwise covered by the Uniform Code of Military Justice, while such persons are on the Midway Islands.

(b) In no event shall the provisions of this part supersede federal law, or the Uniform Code of Military Justice, nor shall the provisions of this part derogate the inherent or delegated authority, responsibility, and powers of the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, under U.S. Navy Regulations, 1973, the Uniform Code of Military Justice, other pertinent Navy directives, and federal law.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 762.6 Executive authority; duration.

The executive authority at the Midway Islands is vested in the Secretary of the Navy. The Officer-in-Charge, U.S. Naval Air Facility, Midway Island, is the agent of the Secretary or his disignee in carrying out any function, power, or duty under this Part 762. The Officer-in-Charge's authority commences upon his assumption of command of U.S. Naval Air Facility, Midway Island, and continues until he is relieved of that command by replacement. In the event of the absence, disability, or death of the Officer-in-Charge, the Acting Commanding Officer of U.S. Naval Air Facility, Midway Island, is vested with the authority prescribed in this part for the Officer-in-Charge and shall remain so vested until the return, recovery, or replacement of the Officer-in-Charge.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.8 Authorized functions, powers, and duties.

The Officer-in-Charge may, personally or through his staff:

(a) Issue citations for violations of Subpart C of this part;

(b) Abate any public nuisance upon the failure of the person concerned to comply with a removal notice;

(c) Make sanitation and fire-prevention inspections;

(d) Perform marriages, and maintain records of vital statistics, including birth, marriage, and death certificates;

(e) Inspect vehicles, including bicycles, for roadworthiness, and boats for seaworthiness;

(f) Confiscate property used in committing a crime;

(g) Investigate accidents and suspected crimes;

(h) Move unlawfully parked vehicles, boats, or aircraft;

(i) Take possession of lost or abandoned property and dispose of it under the provisions of 10 U.S.C. 2575 and applicable Navy directives;

(j) Delay or restrict the departure of any aircraft for reasonable cause;

(k) Impose quarantines;

(l) Impound and destroy unsanitary food, fish, or beverages;

(m) Evacuate any person from a hazardous area;

(n) Establish and maintain a facility for the lawful restraint or confinement of persons and provide for their care;

(o) Remove any person from the Midway Islands for cause;

(p) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

(q) Perform any other acts, not inconsistent with this part or other applicable laws or regulations, that he considers necessary for protecting the health and safety of persons and property on the Midway Islands: and

(r) Issue any order or notice necessary to implement this section.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.10 Emergency authority.

During the imminence and duration of any emergency, the Officer-in-Charge may perform any acts necessary to protect life and property.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart C—Criminal Law; Petty Offenses; Penalties

§ 762.15 General.

In addition to any act made criminal in this part, any act committed on Midway Islands which would be a violation of the laws of the United States; or of the provisions of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified; or any act committed on the Midway Islands that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States, is a criminal offense and shall be punished, respectively, according to this part; the laws of the United States; Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified; or according to the laws applicable on board United States vessels on the high seas. [The Act of June 15, 1950 (ch. 253, 64 Stat. 217).]

§ 762.16 Adoption of certain criminal provisions of the Hawaii Revised Statutes.

(a) *Offenses adopted.* Whoever on the Midway Islands is guilty of any act or omission, which, although not made punishable by an enactment of Congress or under §§ 762.20 through 762.39, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b) *Jurisdiction over such offenses.* The United States District Court for the District of Hawaii shall have jurisdiction to try all such offenses except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500 or both. Those offenses falling within the above-stated exception shall be tried in the Midway Islands Court.

§ 762.17 Conflicts of laws.

In no event shall the provisions of this part supersede the Uniform Code of Military Justice when the latter is applicable. Any adopted provisions of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, which duplicate or conflict with any other provisions of this part shall be of no effect.

§ 762.18 Time limitations.

(a) A prosecution for any petty offense under this part must be commenced within two years after it is committed.

(b) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(c) A prosecution is commenced either when an information is filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(d) The period of limitation does not run:

(1) During any time when the accused is absent from the Midway Islands or has no reasonably ascertainable place of abode or work within the Midway Islands, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or

(2) During any time when a prosecution against the accused for the same conduct is pending in the Midway Islands Court.

(e) Except those offenses which are subject, under Title 37 of the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, offenses charged and treated under § 762.16 (a) and (b), shall be subject to the appropriate time-limitation rules set forth in section 108, Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified.

§ 762.19 Petty offenses; general.

All offenses contained in §§ 762.20 through 762.39 and those offenses adopted under § 762.16(a), as they now appear or as they may be amended or recodified, which are subject, under Title 37, "Hawaii Revised Statutes," to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, shall be termed "Petty Offenses" and subject to the penalties set forth in §§ 762.40 through 762.49.

§ 762.20 Breach of the peace offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, to engage in fighting, threatening, or other violent or tumultuous behavior; or to make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to any person present; or to create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly to obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. "Obstruction" as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, to refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard. An order to move under this paragraph addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control;

(d) To be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs, or other substance. As used in this paragraph, "substantially intoxicated" is defined as an actual and considerable disturbance of mental or physical capacities;

(e) With intent to arouse or gratify sexual desire of any other person, to expose one's genitals to a person to whom one is not married under circumstances in which one's conduct is likely to cause affront or alarm; or

(f) Who is a minor under the age of 18 years, except a person in the military, to loiter about or otherwise be on any street, road, beach or other public place or in any theater, club, or other facility between the hours of 12:00 midnight and 5:30 a.m. unless accompanied by an adult over the age of 21 years and with the express permission of such minor's parent or legal guardian; and for any parent, guardian, or other person having the legal care, custody, or control of any minor under the age of 18 years, except a person in the military, to allow or permit such minor to violate this ordinance.

§ 762.22 Offenses against property.

It shall be unlawful for any person, while on the Midway Islands:

(a) To loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, to peek in any door or window of any inhabited building or structure located thereon without lawful purpose;

(b) To enter upon any assigned residential quarter or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Who is a male to enter any area, building, or quarter reserved for women, except in accordance with established visiting procedures;

(d) Who is a female to enter any area, building, or quarter reserved for men, except in accordance with established visiting procedures;

(e) To enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building;

(f) To enter or remain in any area or building designated and posted as "restricted" unless authorized by proper authority to be there; or

(g) To steal any services or property of a value of less than $50 belonging to or property of another.

§ 762.24 Moral offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in prostitution. "Prostitution" means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) To do any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed. "Lewd Act" includes any indecent or obscene act.

§ 762.26 Alcoholic beverages offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii. It shall not be unlawful, however, for persons authorized to sell alcoholic beverages to sell beer with an alcoholic content of not more than 3.2 percent by weight to military personnel regardless of age: or

(b) To present or have in his possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of § 762.26(a).

§ 762.28 Vehicle offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To operate or use intentionally any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, for any purpose, without consent of the owner thereof or his authorized agent;

(b) To operate any bicycle that has not been properly registered with the Security Department, U.S. Naval Air Facility, Midway Island, within one week after entering U.S. Naval Air Facility, Midway Island, with such bicycle, or within 72 hours after ownership or possession thereof has been obtained on the Midway Islands.

(c) To operate any automobile, truck, bicycle, motorcycle or other vehicle, aircraft, or boat or other vessel, without due regard for safety of others;

(d) To operate any automobile, truck, bicycle, motorcycle, or other vehicle and disregard or disobey any traffic regulation, sign, or marking erected, inscribed, or placed by competent authority on the Midway Islands, including, but not limited to, "Stop," "Yield," "Speed," and "No Parking" signs;

(e) To operate a United States Government vehicle without holding a current United States Government operator's license for that type of vehicle;

(f) To operate a privately owned automobile, truck, motorcycle, or like motor vehicle without holding a valid operator's license from some State or territory of the United States;

(g) To operate any automobile, truck, bicycle, motorcycle, or other vehicle, aircraft, or boat or other vessel, or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbiturates; or

(h) To exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Islands is 15 miles per hour.

§ 762.30 Weapons offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) Other than a security patrolman or shore patrolman or other duly appointed official in the performance of an official duty, to carry a concealed pistol or other concealed firearm, or a concealed knife with a blade more than four inches long or with a blade capable of being opened by a mechanical device, commonly known as a switchblade knife; or

(b) Without proper authority, to keep or use in any place any dangerous weapons including rifles, shotguns, pistols, airguns, CO_2 guns, pellet guns, and BB guns.

§ 762.32 Offenses against the environment.

It shall be unlawful for any person, while on the Midway Islands:

(a) Knowingly to place, throw, drop, or allow to drop any litter on any property or in any waters or beach. "Litter" means rubbish, refuse, and debris of whatever kind or description, whether or not it is of value;

(b) To grossly waste potable water; or

(c) To remove, injure, or destroy any wild bird, egg, or seal, or for any owner of a dog or other pet to allow knowingly such dog or other pet to remove, injure, or destroy any wild bird, egg, or seal, or for the parent or legal guardian of any minor child to allow knowingly such minor child to remove, injure, or destroy any wild bird, egg, or seal.

§ 762.34 Miscellaneous offenses.

It shall be unlawful for any person, while on the Midway Islands:

(a) To engage in a trade, business, or other commercial activity on Midway Islands without first obtaining written permission from the Officer-in-Charge, U.S. Naval Air Facility, Midway Island;

(b) To smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft, fueling pit, or ordnance or pyrotechnic storage areas;

(c) Knowingly to report or cause to be reported to the Security Department, Fire Department, or any official thereof, or to any other public official, or willfully to activate, or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. "Emergency," as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(d) Intentionally to report to any shore patrolman, security patrolman, fireman, officer of the day, junior officer of the day, or other public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.35 Attempt.

(a) A person is guilty of attempt to commit a crime if he commits an act, done with the specific intent to commit an offense, amounting to more than mere preparation and tending, even though failing, to effect its commission.

(b) It shall be unlawful for any person, while on the Midway Islands to attempt to violate any section of Subpart C, including all offenses adopted from Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified. Any person convicted of an attempt to commit an offense shall be subject to the same appropriate penalties authorized under §§ 762.40 through 762.49 for the commission of the offense attempted, except that attempts of all offenses adopted under § 762.16, except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified to a penalty of imprisonment of six months or less or a fine of not more than $500, shall be punished as directed by appropriate sections of Title 37, "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified.

§ 762.40 Penalties for petty offenses.

Whoever is found guilty of a violation of any petty offense under this subpart, other than § 762.28 (b) through (h), is subject to a fine of not more than $500 or imprisonment for not more than six months, or both.

§ 762.42 Penalties for motor vehicle violations.

Whoever is found guilty of a violation of any one of § 762.28 (b) through (h), is subject to a fine of not more than $100, imprisonment of not more than 30 days, or suspension or revocation of his privilege to drive a motor vehicle aboard U.S. Naval Air Facility, Midway Island, or any combination of, or all of, these punishments.

§ 762.44 Contempt.

Judges of the Midway Islands Court may, in any criminal case or proceeding, punish any person for disobedience of any order of the court, or for any contempt committed in the presence of the court, by a fine of not more than $100, or imprisonment of not more than 30 days, or both.

Subpart D—Midway Islands Court; Rules of Criminal Procedure

§ 762.50 Establishment; members; sessions.

(a) There is created a "Midway Islands Court" which is vested with the judicial authority provided in this Part 762. The court shall consist of such Navy judge advocates as are designated by the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet. In the absence of an appointment to the contrary, the most senior in date of rank of those appointed shall act as senior judge.

(b) The Senior Judge shall appoint someone under his authority to act as Clerk of the Court who will be responsible for maintaining a public docket containing such information as the Senior Judge may prescribe.

(c) Sessions of the court are held on the Midway Islands at times and places designated by the Senior Judge.

(d) Normally, not more than one judge shall be required to hear any individual case.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.52 Attorney for the United States.

The Senior Judge may appoint any judge advocate or attorney to represent the United States in any criminal case in the Midway Islands Court or on appeal to the Commander, U.S. Naval Base, Pearl Harbor or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet.

§ 762.54 Criminal jurisdiction.

The Midway Islands Court has jurisdiction over all petty offenses and other minor violations of this part. The United States District Court for the District of Hawaii shall have jurisdiction over all other offenses adopted under § 762.16, over offenses against the laws of the United States, and over those offenses committed within the special maritime jurisdiction contained in the Act of June 15, 1950 (chapter 253, 64 Stat. 217).

§ 762.55 Venue.

Trial of all offenses under the jurisdiction of the Midway Islands Court shall be had at the U.S. Naval Air Facility, Midway Island; trial of all other offenses shall be in the United States District Court for the District of Hawaii.

§ 762.56 Rules of criminal procedure.

(a) Sections 762.56 through 762.79 govern the procedure in criminal proceedings in the Midway Islands Court. They shall be construed to ensure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expenses and delay.

(b) The judge of the court who presides at any trial or other criminal proceeding is responsible for the making of an appropriate record of the proceeding.

§ 762.58 Release prior to trial and bail.

(a) The release of any person arrested on the Midway Islands for a violation of this part shall be in accordance with 18 U.S.C. 3146 as it now appears or as it may be amended or recodified.

(b) When an offense has been charged by a citation issued by a security patrolman, shore patrolman, or other duly designated peace officer or the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, bail shall be set in the amount prescribed by the Senior Judge for the violation. The bail shall be paid in cash to the Clerk of the Court. The bail may be forfeited by the accused and the proceedings thereby terminated in the case of a violation of § 762.28 that does not involve a moving vehicle collision or intoxication while driving, or with permission of the court in the case of any other offense charged by citation pursuant to § 762.84.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.62 Information.

(a) Any petty offense may be prosecuted by a written information signed by the attorney charged with prosecuting the case. If, however, the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as the information. Offenses against the laws of the United States, offenses committed against the laws made applicable by the Act of June 15, 1950 (chapter 253, 64 Stat. 217), and offenses adopted under § 762.16, except those which are subject, under Title 37, "Hawaii Revised Statutes," as it now appears or as it may be amended or recodified, to a penalty of imprisonment for six months or less or a fine of not more than $500, or both, shall be referred to the United States Attorney, Hawaii, for appropriate disposition.

(b) A copy of the information shall be delivered to the accused or his counsel as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 762.64 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the court shall give him a reasonable opportunity to procure counsel. If he cannot afford counsel or is unable to procure counsel after reasonable efforts have been expended, the court shall advise him of his right to have counsel appointed, and shall appoint a judge advocate or other lawyer counsel for the accused unless the accused shall have made a voluntary and intelligent waiver of his right to counsel.

(c) When both sides are ready for arraignment, or when the court determines that both sides have had adequate opportunity to prepare for arraignment, the court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in court, ask the accused whether he pleads "guilty" or "not guilty." The court shall enter in the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the court may at its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily and with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the court, change a plea of not guilty to one of guilty. The court shall then proceed as if the accused had originally pleaded guilty.

(g) Nothing contained in this subpart shall be construed to diminish any additional rights afforded military personnel under the Uniform Code of Military Justice.

§ 762.66 Trial.

(a) If the accused pleads not guilty or if a plea of guilty is not accepted by the court and a consequent plea of not guilty entered, the accused is entitled to a trial on the charges in accordance with the procedures prescribed in the Rules of Criminal Procedure for the United States District Courts, 18 U.S.C., except as otherwise provided in this part. There is no trial by jury for petty offenses.

(b) All persons shall give their testimony under oath or affirmation. The Senior Judge shall prescribe the oath and affirmation that may be administered by any judge or the Clerk of the Court.

(c) Upon completion of the trial, the court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

§ 762.68 Sentence.

(a) If the court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge.

(b) After a finding of guilty is made, either by virtue of an accepted plea of guilty or as the verdict of the court after trial, the court:

(1) May delay sentencing pending receipt of any presentencing report ordered by it;

(2) Shall, before imposing sentence, hear such statements, whether written or oral, by the prosecution and defense, if any, in regards to mitigation, extenuation, previous good character of the accused, matters in aggravation, and permissible evidence of bad character of the accused. In this regard, the accused or his counsel may introduce any reasonable statement he wishes in mitigation or extenuation or any evidence of previous good character. The prosecution may introduce evidence in aggravation including prior federal, state, or Midway Islands convictions. The prosecution may introduce evidence of previous bad character only if the accused has introduced evidence of previous good character; and

(3) Shall thereafter impose any lawful sentence, including, a suspended or partially suspended sentence; revocation or suspension of any Midway Islands automobile, truck, motorcycle, or other motor vehicle, or boat or other vessel permit in cases involving violations of § 762 28; or placement of accused on probation.

§ 762.70 Subpoenas.

(a) The Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) The clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court may direct that books, papers, and documents designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence. It may, upon their production, allow the books, papers, documents, or objects or portions thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) This section shall in no way be construed to limit federal subpoena powers, laws, or rules.

§ 762.72 Appeals.

(a) The defendant in any criminal case may appeal from any judgment of the Midway Islands Court to the Commander, U.S. Naval Base, Pearl Harbor, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet, by filing a notice of appeal with the Senior Judge, and serving a copy on the attorney or judge advocate who represented the United States at trial.

(b) The notice must be served and filed within 15 days after the judgment of the Midway Islands Court.

(c) Upon receiving a notice of appeal, with proof of service on the attorney or judge advocate who represented the United States at trial, the Senior Judge shall forward the record of the case to the Commander, U.S. Naval Base, Pearl Harbor.

(d) The appellant must serve and file a memorandum with the Commander, U.S. Naval Base, Pearl Harbor, within 10 days after filing notice of appeal setting forth the grounds for appeal. The attorney or judge advocate who represented the United States at trial may file a reply memorandum within 10 days thereafter.

(e) The Commander, U.S. Naval Base, Pearl Harbor, may affirm, dismiss, or modify the order of the court, or exercise any of the other powers of the court. The judgment of the Commander, U.S. Naval Base, Pearl Harbor, is final.

(f) Cases tried in the United States District Court for the District of Hawaii shall be subject to federal laws and rules applicable to appeals.

§ 762.74 New trial.

A judge of the court may order a new trial as required in the interest of justice, or vacate any judgment and enter a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for a new trial or vacation of judgment is made.

Subpart E—Warrants; Arrests; Special Procedures

§ 762.80 Warrants.

(a) *Arrest warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. Probable cause, as used herein, means that there exist facts which are sufficient to lead a reasonably prudent and cautious man to a natural conclusion that the person to be arrested committed the offense for which he is to be arrested. The issuing officer shall:

(i) Place the name of the person charged with the offense in the warrant, or, if his name is not known, any name or description by which he can be identified with reasonable certainty;

(ii) Sign the warrant;

(iii) Describe in the warrant the offense charged;

(iv) Issue the warrant to a security patrolman, shore patrolman, or other duly designated peace officer for execution; and

(v) Place in the warrant a command that the person charged with the offense be arrested and brought before him.

(2) Each person making an arrest on the Midway Islands shall take the arrested person, without unnecessary delay, before the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or a judge of the Midway Islands Court, as appropriate.

(3) The official before whom an arrested person is brought shall inform him of the complaint against him. The official shall also advise the arrested person that he has the right to remain silent and make no statement; that any statement made, whether oral or written, may be used against him, that he has the right to consult with a

lawyer and to have a lawyer with him during questioning and to seek advice before answering any questions; that he may employ civilian counsel of his own choice and at his own expense; that if he cannot afford a lawyer, or is a service member, the court will appoint one for him if he so desires; and that, if he decides to answer questions, he has the right to stop answering at any time and terminate the interrogation. Before any security patrolman, shore patrolman, or other duly designated peace officer questions any person arrested, he must advise the arrested person of his rights, as set forth above, whether such questioning occurs before or after the arrested person is brought before the appropriate official as designated above in this section. No warnings need be given, however, prior to general on-the-scene questioning or identification inquiries.

(b) *Search warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for search and seizure, if, after dispassionate and impartial consideration of all evidence, information, and circumstances involved, probable cause is deemed to exist. Probable cause, as used herein, means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

(i) An offense probably is about to be, is being, or has been committed;

(ii) Specific fruits or instrumentalities of the crime, contraband, or evidence exist; and

(iii) Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

(2) If, after considering all information, the judge shall decide to issue a search warrant, such warrant shall specifically include the following information:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person, official, security patrolman, shore patrolman, or other duly designated peace officer requesting the warrant;

(iii) The name and address of the person(s) suspected and the specific offense(s) of which he is suspected;

(iv) The address, place, or structure which is to be searched;

(v) The general nature of the items intended to be seized;

(vi) The information presented or reasons for suspecting the suspected person(s) in general; and

(vii) An authorization to search the described place for the property specified and, if the property is found there, to seize it, followed by the date, time, capacity, and signature of the judge issuing such warrant.

(3) A search warrant must be executed and returned to the issuing authority within five days after date of issuance. A search warrant executed within the five-day period shall be deemed to have been timely executed and no further showing of timeliness need be made.

(4) Security patrolmen, shore patrolmen, and other duly designated peace officers or other designated personnel conducting searches shall do so in accordance with the issued warrant.

(5) Any property seized as a result of a search or in connection with an alleged offense (unless property is highly perishable) is to be retained in a secure place pending trial in accordance with the orders of the court. All seized property shall be securely tagged with the following information:

(i) Date seized;

(ii) Property searched and location of seized article(s) when so seized;

(iii) Person ordering search and warrant number;

(iv) Signatures of person searching and witness; and

(v) Place where property is now located and names and addresses of any persons who have had custody thereof prior to deposit in the secure place required by this paragraph. A complete chain of custody record is to be kept.

(6) The property must be produced in court, if practicable. At the termination of the trial, the court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case.

(c) *Sanitation and fire prevention inspection.* (1) Any judge of the Midway Islands Court may issue a warrant to inspect property on the Midway Islands for purposes of maintaining sanitation and fire prevention.

(2) Such warrant shall indicate:

(i) The time and date the warrant was requested;

(ii) The name and capacity of the person requesting the warrant;

(iii) Property description or address of place or structure to be inspected;

(iv) General purpose of inspection;

(v) Date and time inspection intended to be made; and

(vi) An authorization to inspect the described place for the purpose specified, followed by the date, time, capacity, and signature of judge issuing the warrant.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.82 Arrests.

(a) Any person may make an arrest on the Midway Islands, without a warrant, for any crime (including a petty offense) that is committed in his presence.

(b) Any security patrolman, shore patrolman, or other duly designated peace officer may, without a warrant, arrest any person on the Midway Islands who violates any provision of this Part 762 or commits a crime that is a violation of the laws of the United States or the laws made applicable to the Midway Islands under the Act of June 15, 1950 (Chapter 253, 64 Stat. 217), in his presence, or that he has probable cause to believe that person to have committed.

(c) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer must display a warrant, if he has one, or otherwise clearly advise the person arrested of the violation alleged, and thereafter require him to submit and be taken before the appropriate official on the Midway Islands.

(d) In making an arrest, a security patrolman, shore patrolman, or other duly designated peace officer may use only the degree of force needed to effect submission, and may remove any weapon in the possession of the person arrested.

(e) A security patrolman, shore patrolman, or other duly designated peace officer may, whenever necessary to enter any building, vehicle, aircraft, or vessel to execute a warrant of arrest, force an entry after verbal warning.

(f) A security patrolman, shore patrolman, or other duly designated peace officer may force an entry into any building, vehicle, aircraft, or vessel whenever:

(1) It appears necessary to prevent serious injury to persons or damage to property, and time does not permit the obtaining of a warrant;

(2) To effect an arrest when in hot pursuit; or

(3) To prevent the commission of a crime which he reasonably believes is being committed or is about to be committed.

§ 762.84 Citation in place of arrest.

In any case in which a security patrolman, shore patrolman, or other duly designated peace officer may make an arrest without a warrant, he may, under such limitations as the Officer-in-Charge may impose, issue and serve a citation, or serve a citation issued by the Officer-in-Charge, on a person in place of arresting him if the officer considers that the public interest does not require an arrest. The citation must briefly describe the offense charged and direct the accused to appear before the Midway Islands Court at a designated time and place.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.86 Abatement of nuisance.

Whenever the Officer-in-Charge determines that, on any premises on the Midway Islands, a condition exists that is unsanitary or hazardous, that may be injurious to the public, or is otherwise a nuisance, he may order the condition abated. If the legal custodian of the premises concerned does not take action to abate the nuisance within 30 days after the order is issued, the Officer-in-Charge may enter on the premises and abate the nuisance for, and at the expense of, the custodian.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart F—Registration and Permit Regulations

§ 762.90 Registration of certain property.

(a) Each person who has custody of any of the following on the Midway Islands shall register it with the Officer-in-Charge:

(1) A privately owned motor vehicle;

(2) A privately owned boat;

(3) An animal;

(4) Any device, weapon, or instrument designed for inflicting bodily injury, including a gun, pistol, or other firearm operated by air, gas, spring, or otherwise;

(5) Any narcotic or dangerous drug not obtained on prescription, and all poisons other than commonly used household poisons or toxic substances; or

(6) Any known explosive.

(b) Each person who obtains custody of an article described in paragraphs (a)(4), (5), or (6) of this section shall register it immediately upon obtaining custody. Each person who obtains custody of any other article described in paragraph (a) of this section shall register it within 10 days after obtaining custody.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.92 Permits.

Subject to reasonable restrictions and conditions that he considers appropriate, the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, may require a Midway Islands permit for the following:

(a) Any business, commercial, or recreational activity conducted for profit, including a trade, profession, calling, or occupation, or an establishment where food or beverage is prepared, offered, or sold for human consumption (except for personal or family use);

(b) The practice of any medical profession, including dentistry, surgery, osteopathy, and chiropractic;

(c) The erection of any structure or sign, including a major alteration or enlargement of an existing structure;

(d) The discharge of explosives or fireworks or of firearms, guns, or pistol operated by air, gas, spring, or otherwise, or any other weapon;

(e) The burial of any human or animal remains, except that fish and bait scrap may be buried at beaches where fishing is permitted without obtaining a permit;

(f) Keeping or maintaining any animal, including dogs;

(g) All vehicles (including bicycles), and operators thereof, except aircraft. The operator of a vehicle shall display his permit or permit number on the vehicle in a place and manner prescribed by the Officer-in-Charge;

(h) Boats and boat operators. The operator of a boat or other vessel shall display his permit or permit number on or in the vessel in a place and manner prescribed by the Officer-in-Charge;

(i) Food handlers;

(j) Drugs and narcotics not obtained on prescription, and poisons other than commonly used household poisons or toxic substances; or

(k) Building construction.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.94 Expiration of permits.

(a) Each Midway Islands permit expires on the earliest of the following dates:

(1) Two years after the date it is issued;

(2) The date specified on the permit;

(3) In the case of a motor vehicle, boat, or other vessel, or firearm, the date its custody is transferred to any person other than the holder of the permit therefor; or

(4) The date it is revoked by the Officer-in-Charge.

(b) Notwithstanding paragraph (a)(1) of this section, the Officer-in-Charge may issue a permit for a period longer than two years to coincide with the terms of any agreement between the Department of the Navy and the permit holder, applicable to the Midway Islands.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

§ 762.96 Revocation or suspension of permits.

(a) The Officer-in-Charge may, after notifying the holder of a Midway Islands permit and giving him an opportunity to be heard, order the permit suspended or revoked for cause, including:

(1) Lack of physical fitness required to hold the permit;

(2) Lack of roadworthiness of a vehicle, or of seaworthiness of a boat or other vessel;

(3) Lack of need for the permit;

(4) Breach of any term or condition of the permit; or

(5) Conviction for violation of any regulation of this part where the violation is related to activities conducted under the permit.

(b) In any case in which he determines that an emergency exists requiring immediate action, the Officer-in-Charge may issue an order of suspension or revocation, effective immediately, without notice. However, the permit holder may, within 10 days after the suspension or revocation, request a hearing. If he so requests a hearing, he is entitled to it. The emergency order is not stayed pending hearing.

[41 FR 29672, July 19, 1976, as amended at 51 FR 22283, June 19, 1986]

Subpart G—Civil Small Claims Law

§ 762.100 Applicable law and jurisdiction over small claims.

(a) The Midway Islands Court shall have jurisdiction over civil cases for the recovery of money only where the amount claimed does not exceed $500 exclusive of the interest and costs except as provided by § 762.108.

(b) The court's jurisdiction is further limited in that no such claim cognizable under paragraph (a) of this section shall be within the court's jurisdiction unless:

(1) The claim arises or has arisen on the Midway Islands;

(2) All plaintiffs and all defendants reside, at the time of trial, on the Midway Islands; and

(3) The claim does not fall within the special maritime jurisdiction under the Act of June 15, 1950 (Chapter 253, 64 Stat. 217).

(c) Actions shall be commenced and maintained in the Midway Islands Court under the procedures set out below and conducted in such a manner as to do substantial justice and equity between the parties. When acting on such actions, the court shall be termed the Small Claims Court.

§ 762.102 Small claims procedure; complaint and service.

(a) Actions shall be commenced in the court by the filing of a statement of claim, in concise form and free of technicalities. All claims shall be verified by the claimant, whether as a party plaintiff or counterclaimant, or by his agent, by oath or affirmation in the form herein provided, or its equivalent. The Clerk of the Court shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the court, but his services shall not be available to a corporation, partnership, or association, or to any individual proprietorship in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by personal service, by registered mail, or by certified mail with return receipt.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned with the signature thereon of the party to whom addressed, the clerk shall attach it to the original statement of claim, and it shall constitute prima facie evidence of personal service upon the defendant.

(c) When notice is served personally, the server shall make proof of service by affidavit sworn to before the Clerk of the Court or before any notary public, showing the time and place of the service.

(d) The actual cost of service shall be taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

IN THE MIDWAY ISLANDS SMALL CLAIMS COURT

————————————————

(Plaintiff)

————————————————

(Address)

vs.

————————

————————————————

(Defendant)

STATEMENT OF CLAIMS

(Here the claimant, whether as party plaintiff or counterclaimant, or at his request the clerk, will insert a concise statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:

THE MIDWAY ISLANDS SS

———————— being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to claimant, whether as party plaintiff or counterclaimant, exclusive of all set-offs and just grounds of defense.)

————————————————

[Plaintiff (or agent)]

Subscribed and sworn to before me this —— day of ————————, 19——.

————————————————

————————————————

————————————————

Clerk (or notary public)

NOTICE

To: ————————————————

Defendant

————————————————

Home address

————————————————

Business address

You are hereby notified that ———— ———————— has made a claim and is requesting judgment against you in the sum of ———————— dollars ($————), as shown by the foregoing statement. The court will hold a hearing upon this claim on ———————— at ———— m. in the Small Claims Court at ————————.

————————————————

(Address of court)

You are required to be present at the hearing in order to avoid judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

(Seal)

————————————————

Clerk of the Court
Midway Islands Courts

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing. The hearing shall not be less than 15 days nor more than 30 days from the date of the filing of the action unless a continuance is granted by the judge for good cause shown. All actions filed in the court shall be made returnable therein.

§ 762.104 Time limitations.

All claims must be commenced as set out in § 762.102, within two years after the claim arises. A claim for money arises when it is due, owing, and unpaid.

§ 762.106 Costs and fees; waiver.

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims Court shall be not more than $5. Other fees shall be as the court prescribes. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the court shall be "Prepayment of costs waived" or "Costs waived." The terms "pauper" or "in forma pauperis" may not be employed in the court. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the court while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the court.

§ 762.108 Set-off or counterclaim; pleading; retention of jurisdiction.

If the defendant, in an action in the Small Claims Court, asserts a set-off or counterclaim, the judge may require a formal and concise plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims Court, as provided by § 762.100, but is for less than $1000, the action shall remain in the Small Claims Court and be tried therein in its entirety. No set-off or counterclaim for an amount greater than $1000 may be asserted in the Small Claims Court.

§ 762.109 Jury trial; demand.

In a case filed or pending in the Midway Islands Court under § 762.100 in which a party entitled to a trial by jury under amendment VII, United States Constitution, files a demand therefor, the case shall be assigned to and tried in the United States District Court for the District of Hawaii under the procedure provided for jury trials in that court.

§ 762.110 Pre-trial settlement.

On the return day specified by § 762.102(g), or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case, the judge shall make an earnest effort to settle the controversy by conciliation. If no settlement is effected, the judge shall proceed with the hearing on the merits pursuant to § 762.112.

§ 762.112 Trial.

(a) The parties and witnesses shall be sworn. In any case in which the civil rights, powers, and duties of any person on the Midway Islands are not otherwise prescribed by the laws of the United States or the laws made applicable under the Act of June 1950 (chapter 253, 64 Stat. 217), the judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, as contained in the "Hawaii Revised Statutes," as they now appear or as they may be amended or recodified, and Hawaii case law. In this regard, the judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions related to privileged communications.

(b) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by § 762.102(f), or under rules of court, or on ex parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to trial on the merits, or have default judgment entered in his favor on any counterclaim filed in the manner provided herein for a plaintiff, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution or make any other disposition thereof as justice requires.

(c) Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of himself or another in the Small Claims Court. The services of an unlicensed person appearing under this paragraph shall be without compensation, either by way of direct fee, contingent fee, or otherwise.

(d) The judge of the court who presides at any trial is responsible for the making of an appropriate record of the proceeding.

§ 762.114 Judgments.

After trial, the judge may immediately render his decision and enter judgment or take the case under submission. In all cases, the judge should render a decision and enter appropriate judgment within 20 days after the close of the trial.

§ 762.116 Award of costs.

In any action pursuant to this subpart the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorneys' fees or commissions shall be allowed or awarded by any judgment of the Small Claims Court.

§ 762.118 No appeal.

There shall be no appeal from a judgment of the court, but the court may alter or set aside any judgment upon application of either party after review of the record.

§ 762.120 Judgment creditors and remedies.

(a) After any final judgment is rendered by the court, the judgment debtor concerned may deposit the sum adjudged owed with the court for payment of the claim, pay the judgment creditor directly, or make such other fair and reasonable agreement for payment or settlement of the claim with the judgment creditor. Payment, in full or by agreement or settlement between the parties after final judgment has been rendered, shall satisfy the judgment and extinguish the claim.

(b) If voluntary payment is not made by the judgment debtor after final judgment is rendered, in an action pursuant to §§ 762.100 through 762.113, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four consecutive weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms.

(c) Any final judgment of the Small Claims Court shall upon order of the court become a statutory lien upon any and all personal property owned by the judgment debtor concerned and located on the Midway Islands. Such lien may be enforced by attachment, levy, judicial sale, or as the court may otherwise direct.

§ 762.126 Parties.

Wherever the term party or parties appears herein, or any reference is made to individuals desiring to present a claim, then such term or terms of reference shall mean and include a party defendant having a counterclaim, offset, or crossclaim to present in the action.

§ 762.128 Forms and public information.

The Midway Islands Court shall cause to be published an information booklet or sheet describing, in language readily understandable by a layman, the procedures of the Small Claims Court, the remedies available upon judgment in the Small Claims Court, and such other information as will facilitate the utilization of the small claims procedure; and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon, and after judgment.

Subpart H—Savings Clause

§ 762.130 Severability of subparts, sections, paragraphs, or provisions.

In the event that any subpart, section, paragraph, or provision of this part shall be declared unconstitutional or superseded by applicable federal legislation, the remainder shall nevertheless remain valid and shall be applied so as to be consistent with such constitutional provisions or overriding legislation.

PART 763—RULES GOVERNING PUBLIC ACCESS

Subpart A—Entry Regulations for Kaho'olawe Island, Hawaii

Sec.
763.1 Purpose.
763.2 Definition.
763.3 Background.
763.4 Entry restrictions.
763.5 Entry procedures.
763.6 Violations.

AUTHORITY: 50 U.S.C. 797; DOD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949-1953 Comp. p. 930, (1958).

SOURCE: 47 FR 27553, June 25, 1982, unless otherwise noted.

Subpart A—Entry Regulations for Kaho'olawe Island, Hawaii

§ 763.1 Purpose.

The purpose of this subpart is to promulgate regulations for entry to Kaho'olawe Island, Hawaii, and its adjacent waters.

§ 763.2 Definition.

For the purpose of this subpart, Kaho'olawe Island includes that portion reserved for naval purposes by Executive Order No. 10436 of February 20, 1953.

§ 763.3 Background.

(a) Kaho'olawe Island is used by the armed forces of the United States as a training area including bombing and gunnery training ranges under authority granted by Executive Order No. 10436. Training operations frequently involve the use of live ordnance, creating an obvious danger to persons on or near the island. Moreover, a large amount of unexploded ordnance is present on Kaho'olawe Island and in adjacent waters.

(b) Individuals who enter the island of Kaho'olawe without authority expose themselves to extremely hazardous conditions. In addition, the presence of unauthorized persons on Kaho'olawe Island or in adjacent waters is likely to interfere with the use of the island for military training. Accordingly, it is necessary to prohibit entry to Kaho'olawe Island except under the controlled circumstances set forth in this subpart.

§ 763.4 Entry restrictions.

(a) Entry by any person upon Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander THIRD Fleet. This prohibition applies to all areas of Kaho'olawe Island reserved for naval purposes by Executive Order 10436.

(b) Entry by any person into the restricted waters adjacent to Kaho'olawe Island for any purpose is prohibited without advance authorization from Commander THIRD Fleet. This prohibition applies to all waters described in 33 CFR 204.223(4).

§ 763.5 Entry procedures.

(a) It is the policy of the Commander THIRD Fleet to authorize, in accordance with the spirit of the American Indian Religious Freedom Act (1978), reasonable access to Kaho'olawe Island during periods when it is not used for military training. However, because there are bombs and other explosives on and under the surface and in the waters of the island, and because there are significant archaeological resources thereon (in 1981, the island was placed on the National Register of Historical Places as an Archaeological District), Navy representatives accompany each island visitation to safeguard both the vistitor(s) and the island's archaeological resources. In this regard, in order to ensure the safety of visitors to the island and its archaeological resources, persons and organizations wishing access to Kaho'olawe Island must comply with the following appropriate procedures: Civilians (except authorized U.S. and State representatives) must:

(1) Request, in writing, access authorization from Commander THIRD Fleet (Code 01K), Pearl Harbor, Hawaii 96860, at least 15 days prior to the access requested, providing therein confirmed access plans (including the exact number of visitors, time, and location of access, designation of person in charge, and any other pertinent information); and

(2) Submit to Commander THIRD Fleet (at the aforementioned address) properly endorsed Standard Liability Release Form (obtainable from Commander THIRD Fleet), for each access participant, at least five (5) days prior to the requested access.

(b) In evaluating each request, the factors just enumerated will be weighed against training commitments, safety requirements, specical projects, and the amount and cost of military supervision necessitated by a granting of the request. Requests for entry will be considered on an individual basis. If a request is granted, the permission to enter Kaho'olawe Island authorizes one visit only, and shall not be construed as authorization for more than one entry unless the authorization itself specifically states otherwise. Moreover, entry pursuant to advance consent, which is not in accordance with the terms and conditions permitted by Commander THIRD Fleet, shall be deemed a violation of this Subpart.

(c) For safety reasons, it is not Commander THIRD Fleet's policy to permit children below the age of 15 access to Kaho'olawe Island.

§ 763.6 Violations.

(a) Any person who violates this subpart is subject to prosecution under 18 U.S.C. 1382, which provides in relevant part:

> Whoever * * * goes upon any * * * naval * * * reservation * * * for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500 or imprisoned not more than six months, or both.

(b) Additionally, persons who violate this Subpart are subject to prosecution under the Internal Security Act of 1950 (50 U.S.C. 797), violations of which may result in a maximum penalty of imprisonment for one year, or a fine of $5,000 or both.

SUBCHAPTER G—MISCELLANEOUS RULES

PART 765—RULES APPLICABLE TO THE PUBLIC

Sec.
765.1—765.5 [Reserved]
765.6 Regulations for Pearl Harbor, Hawaii.
765.7—765.11 [Reserved]
765.12 Navy and Marine Corps absentees; rewards.
765.13 Insignia to be worn on uniform by persons not in the service.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 133, 5031, 6011.

§§ 765.1—765.5 [Reserved]

§ 765.6 Regulations for Pearl Harbor, Hawaii.

The Commander, U.S. Naval Base, Pearl Harbor, Hawaii, is responsible for prescribing and enforcing such rules and regulations as may be necessary for insuring security and for governing the navigation, movements, and anchorage of vessels in the waters of Pearl Harbor and in the entrance channel thereto.

(Sec. 1, 37 Stat. 341, 62 Stat. 799; 18 U.S.C. 2152, 33 U.S.C. 475; E.O. 8143, 4 FR 2179, 3 CFR 1943 Cum. Supp. 504)

[31 FR 16620, Dec. 29, 1966]

§§ 765.9—765.11 [Reserved]

§ 765.12 Navy and Marine Corps absentees; rewards.

The following is set forth as it applies to Navy and Marine Corps absentees. The term "absentee," as used in this section, refers to a service member who commits the offense of absence without leave. Cf. article 86 of the Uniform Code of Military Justice (10 U.S.C. 886).

(a) *Payment of rewards*—(1) *Authority.* When authorized by military officials of the Armed Forces, any civil officer having authority to arrest offenders may apprehend an individual absent without leave from the military service of the United States and deliver him into custody of the military authorities. The receipt of Absentee Wanted by the Armed Forces (DD Form 553) or oral or written notification from military officials or Federal law enforcement officials that the person is absent and that his return to military control is desired is authority for apprehension and will be considered as an offer of a reward. When such a reward has been offered, persons or agency representatives (except salaried officers or employees of the Federal Government, or service members) apprehending or delivering absentees or deserters to military control will be entitled to a payment of

(i) $50 for the apprehension and detention until military authorities assume control, or

(ii) $75 for the apprehension and delivery to military control.

Payment of reward will be made to the person or agency representative actually making the arrest and the turnover or delivery to military control. If two or more persons or agencies join in performing these services, payment may be made jointly or severally but the total payment or payments will not exceed $50 or $75 as applicable. Payment of a reward is authorized whether the absentee or deserter voluntarily surrenders to civil authorities or is apprehended. Payment is not authorized for information merely leading to the apprehension of an absentee or deserter.

(2) *Payment procedure.* The disbursing officer, special disbursing agent or agent officer of the military activity to which an absentee or deserter is first delivered will be responsible for payment of the reward. Payment of rewards will be made on NAVCOMPT Form 2277 supported by a copy of DD Form 553 or other form or notification that an individual is absent and that his return to military control is desired, and a statement signed by the claimant specifying that he apprehended (or accepted voluntary surrender) and detained the absentee or deserter until military authorities assumed control, or that he apprehended (or accepted voluntary surrender) and delivered the absentee or deserter to military control. If oral notification was made in lieu of written notification, the claimant will so certify and

provide the date of notification and the name, rank or rate, title, and organization of the person who made the authorized notice of reward for apprehension of the absentee or deserter.

(b) *Reimbursement for actual expenses*—(1) *Authority.* When a reward has not been offered or when conditions for payment of a reward otherwise cannot be met, reimbursement, not to exceed $75, may be made to any person or agency for actual expenses incurred in the apprehension and detention or delivery to military control of an absentee or deserter. If two or more persons or agencies join in performing these services, payment may be made jointly or severally, but the total payment or payments may not exceed $25. Reimbursement may not be made for the same apprehension and detention or delivery for which a reward has been paid. Actual expenses for which reimbursement may be made include:

(i) Transportation costs, including mileage at the rate of 20.05 cents per mile for travel by privately owned vehicle, for a round trip from either the place of apprehension or civil police headquarters to place of return to military control;

(ii) Meals furnished the service member for which the cost was assumed by the apprehending person or agency representative;

(iii) Telephone or telegraph communication costs;

(iv) Damages to property of the apprehending person or agency if caused directly by the service member during the apprehension, detention, or delivery;

(v) Such other reasonable and necessary expenses incurred in the actual apprehension, detention, or delivery as may be considered justifiable and reimbursable by the commanding officer. Reimbursement will not be made for:

(*a*) Lodging at nonmilitary confinement facilities;

(*b*) Transportation performed by the use of official Federal, State, county, or municipal vehicles;

(*c*) Personal services of the apprehending, detaining, or delivering person or agency.

(2) *Payment procedure.* The disbursing officer or special disbursing agent of the military activity to which an absentee or deserter is first delivered will be responsible for making reimbursement for actual expenses. Reimbursement will be effected on NAVCOMPT Form 2277 supported by an itemized statement in triplicate signed by the claimant and approved by the commanding officer.

(c) *Reimbursement for subsistence furnished*—(1) *Authority.* Civil authorities may be reimbursed for the cost of subsistence furnished absentees or deserters placed in their custody for safekeeping at the request of military authorities. Such reimbursement will be in addition to rewards and reimbursement for actual expenses authorized in paragraphs (a) and (b) of this section.

(2) *Payment procedure.* The disbursing officer or special disbursing agent of the military activity requesting the safekeeping confinement will be responsible for making reimbursement for subsistence furnished by civil authorities. Reimbursement will be effected on NAVCOMPT Form 2277 supported by an itemized statement signed by the claimant and approved by the officer who requested the confinement.

(d) Nothing said in this section shall be construed to restrict or exclude authority to apprehend an offender in accordance with law.

(Sec. 807, 70A Stat. 39; 10 U.S.C. 807. Interpret or apply secs. 808, 7214, 70A Stat. 40, 445; 10 U.S.C. 808, 7214)

[25 FR 1075, Feb. 6, 1960, as amended at 51 FR 22283, June 19, 1986]

§ 765.13 Insignia to be worn on uniform by persons not in the service.

(a) Under Title 10, United States Code, section 773, members of military societies composed of persons discharged honorably or under honorable conditions from the United States Army, Navy, Air Force or Marine Corps, regular or reserve, may, when authorized by regulations prescribed by the President, wear the uniform duly prescribed by such societies to be worn by the members thereof.

(b) The law cited in paragraph (a) of this section further provides that instructors and members of duly organized cadet corps at certain institutions of learning may wear the uniform duly prescribed by the authorities of such institutions.

(c) The law cited in paragraph (a) of this section further provides that the uniform worn by members of the military societies or by members and instructors of the cadet corps referred to in paragraph (a) of this section shall include some distinctive mark or insignia prescribed by the Secretary of the military department concerned to distinguish such uniforms from the uniforms of the Army, Navy, Air Force, or Marine Corps.

(d) Accordingly, except as otherwise provided in this paragraph, the following mark is hereby designated to be worn by all persons wearing the Navy or Marine Corps uniform as provided in paragraphs (a), (b), and (c) of this section: A diamond, 3½ inches long in the vertical axis, and 2 inches wide in the horizontal axis, of any cloth material, white on blue clothing, forestry green on khaki clothing, and blue on white clothing. The figure shall be worn on all outer clothing on the right sleeve, at the point of the shoulder, the upper tip of the diamond to be one-fourth inch below the shoulder seam. For persons who are participating in United States Marine Corps Junior ROTC programs, the following mark is designated to be worn: A round patch, three inches in diameter, which contains a gold Marine Corps emblem centered on a scarlet field. The scarlet field is surrounded with a blue border containing the words "United States Marine Corps Junior ROTC" in white lettering. Surrounding the blue field will be a gold border. Unless otherwise directed, the patch will be worn in the manner described above in connection with the "diamond" insignia.

(e) Within the meaning of paragraph (a) of this section, the occasions when members of the military societies may wear the uniform of their respective society are official functions which such a member attends in his capacity as a war veteran or as a member of such military society.

(f) Marine Corps Uniform Regulations may be examined and individual copies of pertinent provisions thereof may be purchased in accordance with § 701.1 of this chapter.

(Sec. 773, 70A Stat. 35; 10 U.S.C. 773)

[13 FR 8971, Dec. 28, 1948, as amended at 26 FR 11794, Dec. 12, 1961; 37 FR 6472, Mar. 30, 1972; 44 FR 37610, June 28, 1979]

PART 766—USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY CIVIL AIRCRAFT

Sec.

766.1 Purpose.
766.2 Definition of terms.
766.3 Authority.
766.4 Policy.
766.5 Conditions governing use of aviation facilities by civil aircraft.
766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.
766.7 How to request use of naval aviation facilities.
766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.
766.9 Insurance requirements.
766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).
766.11 Fees for landing, parking and storage.
766.12 Unauthorized landings.
766.13 Sale of aviation fuel, oil, services and supplies.

AUTHORITY: 49 U.S.C. 1507.

SOURCE: 35 FR 14451, Sept. 15, 1970, unless otherwise noted.

NOTE: The provisions of this Part 766 are SECNAV Instruction 3770.1B of 30 June 1970.

§ 766.1 Purpose.

This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than U.S. Department of Defense aircraft.

§ 766.2 Definition of terms.

For the purpose of this part certain terms are defined as follows:

(a) *Alternate use.* Use of the aviation facility, specified in the flight plan, to which an aircraft may divert when a landing at the point of first intended landing becomes impractical because of weather. (Aircraft may not be dispatched, prior to takeoff from the airport of origin, to a facility licensed for alternate use.)

(b) *Civil aircraft.* Domestic or foreign aircraft operated by private individuals or corporations, or foreign government-owned aircraft operated for commercial purposes. This includes:

(1) *Contract aircraft.* Civil aircraft operated under charter or other contract to any U.S. Government department or agency.

(2) *Leased aircraft.* U.S. Government-owned aircraft delivered by the Government to a lessee subject to terms prescribed in an agreement which does not limit the lessee's use of the aircraft to Government business.

(c) *Civil aviation.* All flying activity by civil aircraft including:

(1) *Commercial aviation.* Transportation by aircraft of passengers or cargo for hire and the ferrying of aircraft as a commercial venture.

(2) *General aviation.* All types of civil aviation other than commercial aviation as defined above.

(d) *Facility.* A separately located and officially defined area of real property in which the Navy exercises a real property interest and which has been designated as a Navy or Marine Corps aviation facility by cognizant authority; or where the Department of the Navy has jurisdiction over real property agreements, expressed or implied, with foreign governments, or by rights of occupation. (This definition does not include aircraft carriers nor any other type of naval vessel with a landing area for aircraft.)

(e) *Government aircraft.* Aircraft owned or operated by any department or agency of either the United States or a foreign government (except a foreign government-owned aircraft operated for commercial purposes). Also aircraft owned by any department, agency, or political subdivision of a State, territory, or possession of the United States when such local government has sole responsibility for operating the aircraft. Government aircraft includes:

(1) *Military aircraft.* Aircraft used in the military services of any government.

(2) *Bailed aircraft.* U.S. Government-owned aircraft delivered by the Government to a Government contractor for a specific purpose directly related to a Government contract.

(3) *Loaned aircraft.* U.S. Government-owned aircraft delivered gratuitously by any Department of Defense agency to another Government agency, to a U.S. Navy or Marine Corps Flying Club, or to a U.S. Army or Air Force Aero Club.

(f) *Joint-use facility.* A Navy or Marine Corps facility where a specific agreement between the Department of the Navy and a civilian community, or between the U.S. Government and a foreign government, provides for civil aircraft use of the runways and taxiways. Civil aircraft terminal, parking, and servicing facilities are established and controlled by civil authorities in an area separate from those of the Navy or Marine Corps.

(g) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government organizations or personnel at or near the naval aviation facility concerned. Use of a facility to solicit U.S. Government business is not "official business."

(h) *Provisional use.* Use of a naval aviation facility for the purpose of providing adequate service to a community where, because of repair, construction or the performance of other work, the regular civil airport servicing the community is not available for an extended period. (An aircraft may be dispatched prior to takeoff from the airport of origin to a naval aviation facility authorized for provisional use.)

(i) *Scheduled use.* Use of a facility on a scheduled or regularly recurring basis by an air carrier certified by the Civil Aeronautics Board to provide passenger and cargo service to a community or area.

(j) *Services in connection with Government contracts.* This type of operation, cited on the Aviation Facility License, indicates the use of a facility for transporting the contractor's supplies and personnel for the performance of work at the facility under the terms of a specific U.S. Government contract.

(k) *Technical stop.* An en route landing for the purpose of obtaining fuel, oil, minor repairs, or crew rest. This does not include passenger accommodations nor passenger/cargo enplaning or deplaning privileges unless specifically authorized by the Chief of Naval Operations.

(l) *User.* An individual, corporation, or company named in the Aviation Facility License and the Certificate of Insurance.

§ 766.3 Authority.

Section 1107(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1507, 1508) states that "Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other agency having jurisdiction thereof deems advisable and may by regulation prescribe." (See § 766.13 for restrictions imposed by the Federal Aviation Act of 1958.)

§ 766.4 Policy.

Navy and Marine Corps aviation facilities are established to support the operation of Navy and Marine Corps aircraft. Equipment, personnel and material are maintained only at a level necessitated by these requirements and shall not be used to support the operation or maintenance of civil aircraft or non U.S. Government aircraft, except as noted below. (Nothing in this part, however, should be interpreted to prohibit any aircraft from landing at any suitable Navy or Marine Corps aviation facility in case of a bona fide emergency.) (See § 766.5(i).)

(a) *General.* Subject to the procedures established elsewhere in this part, civil aircraft and government aircraft, other than those belonging to the U.S. Government may use Navy or Marine Corps facilities, if necessary, *Provided,* That:

(1) They do not interfere with military requirements, and the security of military operations, facilities, or equipment is not compromised.

(2) No adequate civil airport is available. (Exception to this provision may be made when the aircraft is operated in connection with official business as defined in this part.)

(3) Pilots comply with regulations promulgated by the cognizant military agency and the commanding officer of the facility.

(4) Civil aircraft users assume the risk in accordance with the provisions of the Aviation Facility License.

(5) Each aircraft is equipped with two-way radio which provides a capability for voice communications with the control tower on standard Navy/Marine Corps frequencies.

(6) The user, or requesting government, has obtained permission through diplomatic channels from the host country wherein the facility of intended landing is located, if applicable.

(b) *Civil Aircraft owned and operated by*—(1) *Military personnel.* Private aircraft owned and operated by active duty U.S. military personnel or by Navy/Marine Corps Reservists on inactive duty may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Under no conditions shall such aircraft be allowed to base or operate from a facility for personal convenience nor base at a facility under the guise of official business.

(2) *Civil employees of the U.S. Government.* Private aircraft owned and operated by civil employees of the U.S. Government may be authorized to land at a facility, provided such aircraft is not engaging in air commerce, and such landing is for official business required by written orders. Such aircraft shall not be allowed to base or operate from a facility for personal convenience. (Employees of U.S. Government contractors are not considered civil employees of the U.S. Government.)

(3) *Non-U.S. Government personnel.* An individual or corporation owned and/or operated aircraft may be authorized to land at a facility for:

(i) Sales or service representation to authorized military agents (e.g. the exchange, commissary, or contracting officer).

(ii) Services in connection with U.S. Government contracts. Contracting agency and contract number(s) must be cited in the application for an Aviation Facility License.

(c) *Department of defense charter or contract.* Aircraft operating under a Military Traffic Management and Terminal Service (MTMTS), Military Airlift Command (MAC), or Navy charter or contract for the movement of DOD passengers or cargo may be authorized to use Navy or Marine Corps aviation facilities when required for loading, en route or terminal stops.

(d) *Test and experimental use.* Aircraft being produced for a military agency under contract may use Navy/Marine Corps facilities for testing and experimental purposes, if the contract so provides, or if it is determined to be in the best interests of the U.S. Government to do so. Unless otherwise provided in the contract, an Aviation Facility License is required, and the user shall furnish a Certificate of Insurance as provided in this part.

(e) *Aircraft demonstrations.* Manufacturers of aircraft or installed equipment may be authorized to use Navy/Marine Corps facilities in demonstrating and/or showing aircraft or installed equipment to officials of the U.S. Government when:

(1) It is determined to be in the best interest of the U.S. Government.

(2) The aircraft was produced in accordance with U.S. Government specifications either with or without the aid of Federal funds.

(3) There is an expressed interest on the part of the U.S. Government officials responsible for procurement, approval, or certification of the aircraft.

(f) *Joint use.* When a specific agreement is entered into by the Department of the Navy pertaining to joint civil/military use of a Navy or Marine Corps facility, the terms of that agreement shall take precedence over the provisions of this part.

(g) *Diplomatic agreements.* For diplomatic agreements and clearances to use U.S. Navy and Marine Corps aviation facilities in foreign countries, the provisions of this part are subject to the provisions of status of forces agreements, treaties of mutual cooperation or other international agreements. This part shall be used as a guide in negotiating agreements at the local level with representatives of a foreign military service, the U.S. Embassy, and the host government concerning the use of naval facilities by other than U.S. military aircraft. Approval shall be obtained from the Chief of Naval Operations for proposed terms which are in conflict with this part.

§ 766.5 Conditions governing use of aviation facilities by civil aircraft.

(a) *Risk.* The use of Navy or Marine Corps aviation facilities by civil aircraft shall be at the risk of the operator. Except as hereinafter provided for U.S. Government contractors, the Department of the Navy shall assume no liability or responsibility by reason of the condition of the landing area, taxiways, radio and navigational aids, or other equipment or for notification of such condition; or by the acts of its agents in connection with the granting of the right to use such naval facility. No responsibility is assumed for the security of or damage to aircraft while on property owned or controlled by the U.S. Government.

(b) *Military rules.* Operators of civil aircraft utilizing a Navy or Marine Corps aviation facility shall be required to comply with the air and ground rules promulgated by the Department of the Navy and the commanding officer of the aviation facility. Such compliance shall pertain specifically to clearance authorization for the entry, departure, or movement of aircraft within the confines of the terminal area normally controlled by the commanding officer of the aviation facility.

(c) *Federal aviation regulations.* Operators of civil aircraft shall be required to comply with all Federal Aviation Administration (FAA) rules and regulations including filing of flight plans. When such flight plans are required, they shall be filed with the commanding officer or his authorized representative prior to the departure of the aircraft. When such a flight plan is not required, a list of passengers and crew members, the airport of first intended landing, the alternate airport, and fuel supply in hours shall be placed on file prior to takeoff, with the commanding officer or with the local company representative as appropriate.

(d) *Hours of operation.* The use of a Navy/Marine Corps aviation facility by civil aircraft shall be limited to the hours when the facility is normally in operation.

(e) *Weather minimums.* Civil aircraft shall comply with weather minimums as follows:

(1) Visual Flight Operations shall be conducted in accordance with Federal Aviation Regulations (FAR), § 91.105 of this title. If more stringent visual flight rules minimums have been established for the point of departure or destination, as noted in the aerodrome remarks section of the Department of Defense Flight Information Publication (en Route) Instrument Flight Rules—Supplement, then the ceiling and visibility must be at or above these minimums in the applicable control zone.

(2) Instrument flight operations shall be conducted in accordance with FAR, § 91.116 of this title.

(f) *Inspection.* The commanding officer may conduct such inspection of a transiting civil aircraft and its crew, passengers and cargo as he may consider appropriate or necessary to the carrying out of his duties and responsibilities.

(g) *Customs, immigration, agriculture, and public health inspection.* (1) The civil aircraft commander shall be responsible for compliance with all applicable customs, immigration, agriculture, and public health laws and regulations. He shall also be responsible for paying fees, charges for overtime services, and for all other costs connected with the administration of such laws and regulations.

(2) The commanding officer of the Navy/Marine Corps aviation facility will inform the appropriate public officials of the arrival of civil aircraft subject to such laws and regulations. He will not issue clearances for a civil aircraft to takeoff until such laws and regulations have been complied with. Procedures for insuring compliance with such laws and regulations shall be as mutually agreed to by the commanding officer of the aviation facility and the local public officials.

(h) *Weather alternate.* If a Navy/Marine Corps aviation facility has been approved for use as an alternate airport, radio clearance must be obtained from such facility as soon as the decision is made en route for such use.

(i) *Emergency landings.* Any aircraft may land at a Navy/Marine Corps aviation facility when necessary as a result of a bona fide emergency. However, whenever the nature of the emergency permits the pilot to select the time and place of landing, it is preferred that the pilot land his aircraft at a civil field.

(1) The commanding officer of the aviation facility will require that the pilot of the aircraft pay all fees and charges and execute the Aviation Facility License. A statement explaining the circumstances of the emergency landing must be noted in § 766.5 of the license application. If a narrative report from the pilot is available, it may be attached to the application.

(2) *Clearance of runway.* The Department of the Navy reserves the right to use any method to clear a runway of aircraft or wreckage consistent with operational requirements. Care will be exercised to preclude unnecessary damage in removing wrecked aircraft; however, the Navy assumes no liability as a result of such removal.

(3) *Repairs.* (i) Aircraft requiring major repairs may be stored temporarily in damaged condition. If repairs cannot be completed within a reasonable time, the aircraft must be removed from the facility by the owner or operator of the aircraft without delay.

(ii) No aircraft will be given a major or minor overhaul.

(iii) Engine or air frame minor components may be furnished, when not available through commercial sources, provided such supplies can be spared and are not known to be in short supply. The issuance of such supplies must be approved by the commanding officer.

(iv) Minor components in short supply or major components for which there is a repeated demand can be furnished only on message authority obtained from the Aviation Supply Office, Philadelphia, Pa. (for continental facilities) or local fleet air command or major aviation supply depot (for extracontinental facilities). Complete engines, airplane wings, or other major items of equipment shall not be furnished under this authority.

(v) If the commanding officer believes it is desirable to furnish requested material or services in excess of the restrictions stated herein, he shall request instructions from the Chief of Naval Operations, giving a brief description of the material or services requested together with his recommendations.

(4) *Reimbursement for costs.* (i) The civil user making an emergency landing will be billed in accordance with paragraphs 032500-032503 of the NAVCOMPT Manual and paragraphs 25345-25363 of the NAVSUP Manual for payment of all costs incurred by the Government as a direct result of the emergency landing. Such costs will include those associated with labor, material, rental of equipment, vehicles or tools, etc., for:

(*a*) Spreading foam on runway before the aircraft attempts emergency landing.

(*b*) Fire and crash control and rescue.

(*c*) Movement and storage of aircraft or wreckage.

(*d*) Damage to runway, lights, navigation aids, etc.

(ii) There will be no charge for naval meteorological services and naval communications facilities for the handling of arrival and departure reports, air traffic control messages, position reports and safety messages.

(iii) The determination as to whether landing fees shall be charged pursuant to an emergency landing for maintenance or repair shall be the prerogative of the commanding officer of the facility.

[35 FR 14451, Sept. 15, 1970, as amended at 51 FR 22804, June 23, 1986]

§ 766.6 Approving authority for landings at Navy/Marine Corps aviation facilities.

(a) Except as indicated in paragraphs (b) and (c) of this section, the commanding officer of an active Navy/Marine Corps aviation facility may approve or disapprove landings of civil aircraft at his facility when such landing is:

(1) Directly connected with or in support of U.S. Government business (except those listed in paragraph (c) of this section).

(2) In connection with U.S. Government or community interests on an infrequent basis when no adequate civil airport is reasonably available.

(3) By aircraft owned and operated by Navy/Marine Corps Flying Clubs or U.S. Army or Air Force Aero Clubs which are operated as instrumentalities of the U.S. Government.

(4) By aircraft owned and operated by U.S. Government personnel when such use is in accordance with § 766.4(b) (1) and (2).

(5) By civil aircraft either owned or personally chartered by:

(i) The President or Vice President of the United States or a past President of the United States.

(ii) The head of any Federal department or agency.

(iii) A Member of Congress.

(6) By a bailed, leased, or loaned aircraft (as defined in § 766.2) when operated in connection with official business only.

(7) By aircraft owned and operated by States, counties, or municipalities of the United States when used for official business of the owner.

(b) Except as limited by paragraph (c) of this section, the Commander in Chief, U.S. Naval Forces, Europe; Chief of Naval Material; Commander in Chief, U.S. Atlantic Fleet; Commander in Chief, U.S. Pacific Fleet; Chief of Naval Air Training; Commander, Pacific Missile Range; Commander, Marine Corps Air Bases, Eastern Area; Commander, Marine Corps Air Bases, Western Area; and Commanding General, Fleet Marine Force, Pacific may approve civil aircraft use of any active aviation facility under their control. (At overseas locations, aircraft landing authorizations must be in consonance with the provisions of applicable international agreements.)

(c) The Chief of Naval Operations may approve any of the above requests, and is the only agency empowered to approve all other requests for use of naval facilities by civil and government aircraft, for example:

(1) Applications for use of more than one facility when the facilities are not under the control of one major command.

(2) Application for use of naval aviation facilities when participating in U.S. Government or Department of Defense single-manager contract and charter airlift operations; i.e., Military Airlift Command (MAC) or Military Traffic Management and Terminal Service (MTMTS).

(3) Application for a facility to be used as a regular civil airfield for a community, by either commercial or general aviation.

(4) Requests for use of a facility by foreign civil or government aircraft when:

(i) Such use is not covered by an agreement between the U.S. Government and the government of the aircraft's registry, or

(ii) The facility is located in a country other than that in which the foreign aircraft is registered.

§ 766.7 How to request use of naval aviation facilities.

(a) *Forms required.* Each applicant desiring use of a Navy/Marine Corps aviation facility will be required to:

(1) Execute an application for an Aviation Facility License (OPNAV Form 3770/1 (Rev. 7-70)).

(2) Submit a Certificate of Insurance (NAVFAC 7-11011/36) showing coverage as provided by § 766.9 of this part.

(b) *Exceptions.* Exceptions to the foregoing requirements are:

(1) Aircraft owned and operated by departments or agencies of the U.S. Government for official business.

(2) Aircraft owned and operated or noncommercial purposes by agencies of a foreign government, except in cases where the foreign government charges fees for U.S. Government aircraft.

(3) Aircraft owned and operated by States, possessions, and territories of the United States and political subdivisions, thereof, when used for official business of the owner.

(4) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs of other military services which are operated as instrumentalities of the U.S. Government.

(5) Bailed aircraft, provided the bailment contract specifies that the U.S. Government is the insurer for liability.

(c) *Obtaining forms.* The applicant may obtain the required forms listed in paragraph (a) of this section, from the commanding officer of any Navy or Marine Corps aviation facility or from the Chief of Naval Operations (OP-53C). Navy units may obtain the forms through regular supply channels as a Cog "I" item.

(d) *Preparation of forms.* (1) The license application will be completed in quadruplicate by the applicant in accordance with detailed instructions set forth in Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)).

(2) The Certificate of Insurance will be completed by the insurer. Only the signed original certificate and one copy are required to be submitted.

(e) *Submission of forms.* (1) The forms executed by the applicant shall be submitted to the commanding officer of the aviation facility concerned, except that applications requiring approval by higher authority shall be submitted to the appropriate approving authority, as indicated in paragraph (b) or (c) of this section at least 30 days prior to the first intended landing.

(2) Once the NAVFAC 7-11011/36, Certificate of Insurance, is on file with an executing authority, it is valid until insurance expiration date and may be used by that executing authority as a basis for his action on any subsequent OPNAV Forms 3770/1 submitted for approval.

(f) *Security deposit.* All applications, other than those listed in § 766.11(a) contemplating more than one landing per month, will be accompanied by a security deposit in the form of a certified check payable to the "Treasurer of the United States" in payment of the estimated costs of landing, hangar and outside parking fees, for 3 months in advance, calculated as provided in § 766.11 (c) and (d). Security deposits will be handled as set forth in paragraph 032102 of the NAVCOMPT Manual.

(g) *Nonexclusive use airports.* When either the Chief of Naval Operations or Commandant of the U.S. Marine Corps does not have exclusive operational control over a landing area, the aircraft operator will obtain permission to land from the appropriate civil or military authority.

§ 766.8 Procedure for review, approval, execution and distribution of aviation facility licenses.

(a) *Review of application by the commanding officer.* The commanding officer will review each application for Aviation Facility License and Certificate of Insurance received and determine whether such forms have been completed by the applicant in accordance with the instructions for their preparation as indicated in the Aviation Facility License (OPNAV Form 3770/1 (REV. 7-70)) and the Certificate of Insurance (NAVFAC 7-11011/36(7-70)). As appropriate, the commanding officer will require each applicant to furnish a security deposit as stipulated in § 766.7(f).

(b) *Processing application.* The commanding officer will approve/disapprove the application or forward it to higher authority for approval as required by § 766.6(b) or (c). If the application is approved, the approving authority will then forward all copies of the license and Certificate of Insurance to the Commander, Naval Facilities Engineering Command or his designated representative for review and execution of the license.

(c) *Action by the Commander, Naval Facilities Engineering Command or his designated representative.* (1) Upon receipt, the Commander, Naval Facilities Engineering Command, or his designated representative, will review the license and Certificate of Insurance. He shall determine whether the insurance coverage conforms to the requirements prescribed by § 766.9 of this part or to such requirements as may be promulgated from time to time by the Chief of Naval Material.

(2) Upon approval, he will then execute the license in triplicate, conform all additional copies, and make distribution as provided in paragraph (d) of this section. Applications which are not approved will be returned to the applicant with an explanation of deficiencies which must be corrected prior to execution.

(d) *Distribution.* (1) After execution of a license, distribution will be made as follows:

Original—To the licensee.

Executed copy—To the commanding officer.

Executed copy—To the Commander, Naval Facilities Engineering Command or his designated representative.

Conformed copy—To the Chief of Naval Operations (OP-53).

Conformed copy—To the cognizant commander under § 766.6(b).

Conformed copy—To the disbursing officer serving the performing activity in the case of local deposits, and to the Office of the Navy Comptroller (NAFC3) in the case of central deposits held at the Washington, D.C. level.

Conformed copy—To the Military Airlift Command (MAC) for DOD contract or charter airlift operations.

Conformed copy—To the Military Traffic Management and Terminal Service (MTMTS) for DOD contract or charter airlift operations.

(2) Licenses issued under this authority are to be disposed of under provisions of paragraph 4280 of SECNAVINST 5212.5B, Disposal of Navy and Marine Corps Records. In accordance therewith, official executed copies of licenses are to be retained for a period of 6 years after completion or termination of the agreement. They may be transferred to the nearest Federal records center when superseded, revoked, canceled, or expired for retention by the center until expiration of the 6-year retention period.

§ 766.9 Insurance requirements.

(a) *Control of insurance.* The Commander, Naval Facilities Engineering Command, or his designee, shall be responsible for requiring aircraft owners or operators to procure and maintain liability insurance conforming to the standards prescribed by the Chief of Naval Material. The insurance policy must be obtained at the expense of the civil aircraft owner or operator and with a company acceptable to the U.S. Navy.

(b) *Insurance coverage.* Except for those aircraft exempted by paragraph (c) below, each civil aircraft is required to be covered by insurance of the types and minimum limits established by the Chief of Naval Material. The Certificate of Insurance, must state all coverages in U.S. dollars. Current minimums are:

(1) Privately owned commercially-operated aircraft used for cargo carrying only and aircraft being flight-tested or ferried without passengers will be insured for:

(i) *Bodily injury liability.* At least $100,000 for each person in any one accident with at least $1 million for each accident.

(ii) *Property damage liability.* At least $1 million for each accident.

(2) Privately owned commercially-operated aircraft used for passenger carrying and privately owned noncommercially-operated aircraft of 12,500 pounds or more certified maximum gross takeoff weight will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least $100,000 for each person in any one accident with at least $1 million for each accident.

(ii) *Property damage liability.* At least $1 million for each accident.

(iii) *Passenger liability.* At least $100,000 for each passenger, with a minimum for each accident determined as follows: multiply the minimum for each passenger, $100,000 by the next highest whole number resulting from taking 75 percent of the total number of passenger seats (exclusive of crew seats). For example: The minimum passenger coverage for each accident for an aircraft with 94 passenger seats is computed: 94×0.75=70.5—next highest whole number resulting in 71. Therefore, 71×$100,000=$7,100,000.

(3) Privately owned noncommercially-operated aircraft of less than 12,500 pounds will be insured for:

(i) *Bodily injury liability (excluding passengers).* At least $100,000 for each person in any one accident with at least $500,000 for each accident.

(ii) *Property damage liability.* At least $500,000 for each accident.

(iii) *Passenger liability.* At least $100,000 for each passenger, with a minimum for each accident determined by multiplying the minimum for each passenger, $100,000 by the total number of passenger seats (exclusive of crew seats).

(4) Aircraft insured for a single limit of liability must have coverage equal to or greater than the combined required minimums for bodily injury, property damage, and passenger liability for the type of use requested and for the passenger capacity and gross takeoff weight of the aircraft being operated. For example: the minimum single limit of liability acceptable for an aircraft operating as described in paragraph (b)(2) of this section is $1,000,000 + $1,000,000 + $7,100,000 = $9,100,000.

(5) Aircraft insured by a combination of primary and excess policies must have combined coverage equal to or greater than the required minimums for bodily injury, property damage, and passenger liability, for the type of use, and for the passenger capacity and gross takeoff weight of the aircraft.

(6) Each policy must specifically provide that:

(i) The insurer waives any right to subrogation the insurer may have against the United States by reason of any payment under the policy for damage or injury which might arise out of or in connection with the insured's use of any Navy installation or facility.

(ii) The insurance afforded by the policy applies to the liability assumed by the insured under OPNAV Form 3770/1, Aviation Facility License.

(iii) If the insurer cancels or reduces the amount of insurance afforded under the listed policy, the insurer shall send written notice of the cancellation or reduction to Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C. 20390 by registered mail at least 30 days in advance of the effective date of the cancellation; the policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent, regardless of the effective date specified therein.

(iv) If the insured requests cancellation or reduction, the insurer shall notify the Commander, Naval Facilities Engineering Command, Department of the Navy, Washington, D.C.

20390 immediately upon receipt of such request.

(c) *Exemption.* Government aircraft, as defined in § 766.2(e) are exempt from the insurance requirements specified above. However, this exemption applies to bailed aircraft only if the contract under which the aircraft is bailed specifies that insurance is not required.

§ 766.10 Cancellation or suspension of the aviation facility license (OPNAV Form 3770/1).

(a) *Cancellation.* (1) If the user fails to comply with the terms of the Aviation Facility License (OPNAV Form 3770/1) or of any applicable regulations, all current Aviation Facility Licenses for that user will be canceled. A canceled Aviation Facility License cannot be reinstated; a new application must be submitted for approval as explained in § 766.7.

(2) If the commanding officer of a naval aviation facility has reason to believe that the use of an Aviation Facility License is not in accordance with the terms of the license he should immediately notify the Chief of Naval Operations, giving the name of the user, the Aviation Facility License number, and citing the circumstances of the misuse.

(b) *Suspension.* The approving authority, or the commanding officer of the facility, may suspend an approved Aviation Facility License when such licensed use would be inconsistent with Navy/Marine Corps or national defense interests. Whenever possible, the Department of the Navy will avoid suspension of licenses which have been issued for official business or scheduled air carrier use. In all cases, suspensions will be lifted as quickly as possible. A suspension will not have the effect of extending the expiration date of an approved Aviation Facility License.

§ 766.11 Fees for landing, parking and storage.

(a) The commanding officer of a facility will collect landing, parking, and storage fees, as applicable, from all users required to have an Aviation Facility License by § 766.7 except for the following:

(1) Government aircraft (see definition § 766.2(g)) except that foreign government aircraft will be charged fees if their government charges similar fees for U.S. Government aircraft.

(2) Aircraft being produced under a contract of the U.S. Government.

(3) Any contract aircraft (see definition § 766.2(b)(1)) or other civil aircraft which is authorized to use the facility on official business.

(4) Aircraft employed to train operators in the use of precision approach systems (GCA, ILS, et al.) provided full-stop or touch-and-go landings are not performed.

(5) Aircraft owned and operated by either Navy/Marine Corps Flying Clubs or Aero Clubs or other military services which are operated as instrumentalities of the U.S. Government.

(6) Aircraft owned and operated by military personnel on active duty (Regular and Reserve) or retired, provided the aircraft is not used for commercial purposes.

(7) Landing fees incident to emergency landings for which the landing fee has been waived by the commanding officer in accordance with § 766.5(i)(5)(i).

(b) *Fee for unauthorized landing.* If an aircraft lands at a Navy/Marine Corps aviation facility without obtaining prior permission (except for a bona fide emergency landing), a landing fee in excess of the normal landing fee will be charged to cover the additional expenses incurred due to special handling and processing. The fee for an unauthorized landing will be as follows:

(1) For aircraft weighing less than 12,500 pounds: $100.

(2) For aircraft weighing 12,500 pounds but less than 40,000 pounds: $250.

(3) For aircraft weighing 40,000 pounds but less than 100,000 pounds: $500.

(4) For aircraft weighing above 100,000 pounds: $600.

(c) *Normal landing fee.* The normal landing fee is based on the aircraft maximum authorized gross takeoff weight, to the nearest 1,000 pounds. The maximum gross takeoff weight may be determined either from item 7F of OPNAV Form 3770/1 or from the "Airplane Flight Manual" carried aboard each aircraft. If the weight cannot be determined, it should be estimated.

CHARGE PER LANDING

Inside CONUS—0.20/1,000 pounds or any portion thereof with a minimum of $5.

Outside CONUS—0.30/1,000 pounds or any portion thereof with a minimum of $7.50.

(d) *Parking and storage fees.* Fixed and rotary wing aircraft parking and storage fees are based upon the gross takeoff weight of the aircraft as follows:

(1) *Outside a hangar.* Charges begin 6 hours after the aircraft lands. The rate is 10 cents per thousand pounds for each 24-hour period or fraction thereof, with a minimum charge of $1.50 per aircraft.

(2) *Inside a hangar.* Charges begin as soon as the aircraft is placed inside the hangar. The rate is 20 cents per 1,000 pounds for each 24-hour period or fraction thereof, with a minimum charge of $5 per aircraft.

(e) *Reimbursement.* Collections incident to direct (out of pocket) costs will be credited to local operating and maintenance funds. All other collections, such as for landing, parking, and storage fees will be credited to Navy General Fund Receipt Account 172426. Accumulation of costs and preparation of billing documents are prescribed in paragraphs 032500-032503 of the NAVCOMPT Manual.

§ 766.12 Unauthorized landings.

An aircraft that lands at a Navy/Marine Corps aviation facility without obtaining prior permission from an approving authority, except in a bona fide emergency, is in violation of this part. Civil aircraft landing in violation of this regulation will have to pay the fee prescribed in § 766.11(b). In those cases where an unauthorized landing is made at a facility within a Naval Defense Area, proclaimed as such by Executive order of the President, civil aircraft may be impounded and the operator prosecuted as indicated in OPNAVINST 5500.11C of November 12, 1963. In any event, before the aircraft is authorized to depart, the commanding officer of the facility will:

(a) Inform the aircraft operator of the provisions of this part and the OP NAVINST 5500.11C of November 12, 1963, if applicable.

(b) Require the aircraft operator (or owner), before takeoff, to pay all fees and charges and to comply with the following procedure:

(1) Execute OPNAV Form 3770/1, explaining in item 6 of that form the reason for the landing.

(2) In lieu of submitting a Certificate of Insurance (NAVFAC 7-11011/36), the insurer must furnish evidence of sufficient insurance to include waiver of any right of subrogation against the United States, and that such insurance applies to the liability assumed by the insured under OPNAV Form 3770/1.

(3) When it appears that the violation may have been deliberate, or is a repeated violation, departure authorization must be obtained from the Chief of Naval Operations.

(4) Waiver of the requirements in paragraphs (b)(1) and (2) of this section may be obtained from the Chief of Naval Operations to expedite removal of these aircraft when such waiver is considered appropriate.

[35 FR 14451, Sept. 15, 1970, as amended at 51 FR 22804, June 23, 1986]

§ 766.13 Sale of aviation fuel, oil, services and supplies.

(a) *General policy.* In accordance with sections 1107 and 1108 of the Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), Navy/Marine Corps Aviation fuel, oil, services, and supplies are not sold to civil aircraft in competition with private enterprise. Sections 1107 and 1108 of Federal Aviation Act of 1958 (72 Stat. 798 as amended, 49 U.S.C. 1507, 1508), however, does authorize the sales of fuel, oil, equipment, supplies, mechanical service, and other assistance by reason of an emergency. Such sales will be made only where there is no commercial source and only in the amount necessary for the aircraft to continue on its course to the nearest airport operated by private enterprise.

(b) *Contract aircraft.* The sale of aviation fuel, oil, supplies, etc. to aircraft under U.S. Government contract or charter is permitted at, and limited to, points where passengers or cargo are loaded into or discharged from the aircraft under terms of the contract or charter. Sales are not authorized at naval aviation facilities where commercial supplies and service are available.

PARTS 767-769—[RESERVED]

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714, unless otherwise noted.

Subpart A—Hunting and Fishing at Marine Corps Base, Quantico, Virginia

SOURCE: 41 FR 22345, June 3, 1976, unless otherwise noted.

§ 770.1 Purpose.

This subpart provides regulations and related information governing hunting and fishing on the Marine Corps Base Reservation, Quantico, Virginia.

§ 770.2 Licenses.

(a) Every person who hunts or fishes on Marine Corps Base, Quantico, Virginia, must possess appropriate valid licenses in compliance with the Laws of the United States and the State of Virginia.

(b) In addition, hunting and fishing privilege cards, issued by the authorities at Marine Corps Base, Quantico, Virginia, are required for all persons between the ages sixteen and sixty-four, inclusive.

(1) The privilege card may be purchased from the Game Warden at the Natural Resources Management Division Headquarters, Building 5-9, Marine Corps Base, Quantico, Virginia.

(2) The privilege cards are effective for the same period as the Virginia hunting and fishing licenses.

(c) All hunters must obtain a Base hunting permit, and a parking permit, if applicable, from the Game Warden for each day of hunting. The hunting permit must be carried by the hunter and the parking permit must be displayed on the left dashboard of parked vehicles. The hunting and parking permits must be returned within one hour after either sunset or the hour hunting is secured on holidays or during special season.

(d) Eligibility for a Base hunting permit is predicated on:

(1) Possession of required Federal and State licenses for the game to be hunted including Marine Corps Base hunting privilege card;

(2) Attendance at a safety lecture given daily except Sunday during the hunting season given at the Game Checking Station located at the intersection of Russell Road and MCB-1. The lectures commence an hour before sunrise, 0800, and 1200;

(3) Understanding of Federal, State and Base hunting regulations;

(4) And, if civilian, an executed release of U.S. Government responsibility in case of accident or injury.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.3 Fishing regulations.

(a) All persons possessing the proper state license and Base permit are permitted to fish in the areas designated by the Base Game Warden on Marine Corps Base, Quantico, Virginia, on any authorized fishing day. A Base Fishing Privilege Card is required for all persons aged 16 to 65.

(b) Fishing is permitted on all waters within the boundaries of Marine Corps Base, Quantico, Virginia, unless otherwise posted, during the periods provided and under the conditions and restrictions, by the Marine Corps Base, Quantico, Virginia, Game Warden. Information regarding specific regulations for each fishing area must be procured from the Game Warden located in Natural Resources Management Division Headquarters Building 5-9 prior to utilization of Base fishing facilities.

(c) In addition to the requirements of the Laws of Virginia, the following additional prohibitions and requirements are in effect at Marine Corps Base, Quantico, Virginia.

(1) Live minnows will not be used as bait in any impounded waters on the Marine Corps Base, Quantico, Virginia;

(2) No trot lines are permitted in Marine Corps Base waters;

(3) No Large Mouth Bass will be taken, creeled or possessed under the size of twelve (12) inches in length. All Large Mouth Bass under this size will be immediately returned to the water;

(4) No Striped Bass will be taken, creeled or possessed under the size of twenty (20) inches in length. All Striped Bass under this size will be immediately returned to the water;

(5) All persons fishing in the waters of Marine Corps Base, Quantico, Virginia, will possess and utilize a creel card. The card may be obtained from the report boxes located in the vicinity of all fishing areas. The creel report must be completed at the conclusion of the day's fishing and returned to any fishing report box.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.4 Hunting regulations.

All persons possessing the proper State, Federal and Base licenses and permits are permitted to hunt in the areas designated daily by the Game Warden on Marine Corps Base, Quantico, Virginia, on any authorized hunting day. In addition, a minimum of ten percent of the daily hunting spaces will be reserved to civilians on a first come, first served basis until 0600 on each hunting day, at which time, the Game Warden may fill vacancies from any authorized persons waiting to hunt.

§ 770.5 Safety regulations.

(a) Hunting is not permitted within 200 yards of the following: Ammunition dumps, built-up areas, rifle or pistol ranges, dwelling or other occupied structures, and areas designated by the Game Warden as recreation areas.

(b) From the end of the special archery season until the end of the regular winter hunting season, except for duck hunters in approved blinds, hunters will wear an outer garment with at least one square foot of blaze orange visible both front and back above the waist and a blaze orange cap while hunting, or while in the woods for any reason, during the hours that hunting is authorized. Any person traveling on foot in or adjacent to an area open for hunting will comply with the above requirement.

(c) Weapons will be unloaded while being transported in vehicles, and will be left in vehicles by personnel checking in or out at the Game Warden's Office. Weapons will not be discharged from vehicles, or within 200 yards of hard surfaced roads.

(d) Certain hunting areas contain numerous unexploded munitions (duds) which are dangerous and must not be removed or disturbed. Hunters should mark such duds with stakes or other means and report their location to the Game Warden.

(e) Hunters must stay in their assigned areas when hunting.

§ 770.6 Restrictions.

(a) There will be no hunting on Christmas Day; New Year's Day, or after 1200 on Thanksgiving Day and Christmas Eve.

(b) Hunters under 16 years of age must be accompanied by an adult (18 years of age or older) while hunting or in a hunting area. The adult is limited to a maximum of two underage hunters, and must stay within sight and voice contact and no more than 100 yards away from the underage hunters.

(c) The following practices or actions are expressly forbidden: Use of rifles, except muzzleloaders of .40 caliber or larger as specified below, revolvers or pistols; use of shotguns larger than 10 gauge or crossbows (this prohibition extends to carrying such weapons on the person or in a vehicle while hunting), use of buckshot to hunt any game; use of a light, attached to a vehicle or otherwise, for the purpose of spotting game; use of dogs for hunting or tracking deer; training deer dogs on the Reservation; training or running dogs in hunting areas between 1 March and 1 September; driving deer; baiting or salting traps or blinds; hunting on Sunday; molesting beaver or bald eagles. Those personnel who are authorized to hunt on Base, desiring to train or exercise dogs other than deer dogs between 2 September and 28 February, may do so by obtaining clearance to enter training areas at the Range Control Office. This clearance is not permission to hunt, and carrying weapons under these conditions is prohibited.

(d) Hunting will not commence before one half hour before sunrise, and will end not later than sunset. The hours of sunrise and sunset are posted daily at the Game Checking Station.

(e) Weapons will not be loaded outside of hunting hours.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23205, May 24, 1983]

§ 770.7 Violations.

Violations of hunting regulations, fishing regulations, safety regulations, or principles of good sportsmanship are subject to administrative restriction of hunting or fishing privileges and possible judicial proceedings in State or Federal courts.

(a) The Marine Corps Base Game Warden and Wildlife Manager are commissioned as Virginia and Federal game wardens and they can issue summons to appear in civil court for violations of Federal and State game laws.

(b) Offenders in violation of a Federal or State hunting or fishing law will be referred to a civil court.

(c) Offenders in violation of a Federal, State or Base hunting or fishing law or regulation will receive the following administrative actions.

(1) The Base Game Warden or the Wildlife manager shall have the authority to temporarily suspend hunting and fishing privileges.

(2) And for the first minor offense a letter of warning will be issued.

(3) For the second minor offense hunting or fishing privileges will be revoked for one year.

(4) For the first serious offense hunting or fishing privileges will be revoked for a minimum of one year.

(5) For the second serious offense hunting or fishing privileges will be permanently revoked.

(d) Civilians found in violation of a hunting or fishing regulation or law may be permanently restricted from entering the base.

(e) Serious hunting and fishing offenses include, but are not limited to: spotlighting, false statement on a license, hunting under the influence, employment of a light in an area that deer frequent, and taking game or fish during closed seasons.

§ 770.8 Reports.

Upon killing a deer or turkey, a hunter must attach the appropriate tab from his big game license to the carcass before moving the game from the place of kill. The game will then be taken to the Game Checking Station where the tab will be exchanged for an official game tag. All other game, not requiring a tag, killed on the Reservation will be reported to the Game Warden when checking out at the end of a hunt.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23206, May 24, 1983]

§ 770.9 Miscellaneous.

Hunters are encouraged to build and use tree blinds for hunting deer. Duck blinds may be placed on waters within the bounds of the Reservation when specifically authorized by the Wildlife Manager. Muzzleloading rifles .40 caliber and larger will be permitted for deer hunting during the established seasons in those numbered hunting areas located entirely in Fauquier and Stafford Counties within the boundaries of the Marine Corps Base. Deer will only be hunted with the bow and arrow, and shotguns loaded with slugs, with exception of the preceding sentence.

[41 FR 22345, June 3, 1976, as amended at 48 FR 23206, May 24, 1983]

Subpart B—Base Entry Regulations for Naval Submarine Base, Bangor, Bremerton, Washington

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of August 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011, 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 770.15 Purpose.

The purpose of this subpart is to promulgate regulations governing entry upon Naval Submarine Base (SUBASE), Bangor.

§ 770.16 Definition.

For the purpose of this subpart, SUBASE Bangor shall include that area of land in Kitsap and Jefferson Counties, State of Washington which has been set aside for use of the Federal Government by an Act of the legislature of the State of Washington, approved March 15, 1939 (Session laws of 1939, Chapter 126).

§ 770.17 Background.

(a) SUBASE Bangor has been designated as the West Coast home port of the Trident Submarine. Facilities for the repair or overhaul of naval vessels are located at SUBASE Bangor. It is vital to national defense that the operation and use of SUBASE Bangor be continued without undue and unnecessary interruption. Many areas of SUBASE Bangor are of an industrial nature, including construction sites, where inherently dangerous conditions exist.

(b) For prevention of the interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of SUBASE Bangor, and prevention of injury to any such person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon SUBASE Bangor to authorized persons only.

§ 770.18 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Naval Submarine Base, Bangor, or remaining thereon by any person whatsoever for any purpose without the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative is prohibited. *See* 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Department of Defense Directive 5200.8 of 20 August 1954; Chief of Naval Operations Instruction 5510.45B of 19 April 1971; Chief of Naval Operations Instruction 5511.9A of 1 October 1954.

§ 770.19 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commanding Officer, SUBASE Bangor or his authorized representative shall, in writing, submit a request to the Commanding Officer, SUBASE Bangor, at the following address: Commanding Officer, Naval Submarine Base, Bangor, Bremerton, Washington 98315.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of SUBASE Bangor with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.20 Violations.

(a) Any person entering or remaining on SUBASE Bangor, without the consent of the Commanding Officer, SUBASE Bangor or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500 or imprisoned not more than six months or both."

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $500 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart C—Base Entry Regulations for Naval Installations in the State of Hawaii

AUTHORITY: 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C 301; 10 U.S.C. 6011; 32 CFR 700.702, 770.714.

SOURCE: 44 FR 76279, Dec. 26, 1979, unless otherwise noted.

§ 770.25 Purpose.

The purpose of this subpart is to promulgate regulations governing entry to naval installations in the State of Hawaii.

§ 770.26 Definitions.

For the purpose of this subpart the following definitions apply:

(a) *Naval installations.* A naval installation is a shore activity and is any area of land, whether or not fenced or covered by water, that is administered by the Department of the Navy or by any subordinate naval command. The term "naval installation" applies to all such areas regardless of whether the areas are being used for purely military purposes, for housing, for support purposes, or for any other purpose by a naval command. Section 770.31 contains a list of the major naval installations in Hawaii. This list is not considered to be all inclusive and is included only as a representative guide. For the purposes of this subpart the area of water within Pearl Harbor is considered to be within a naval installation.

(b) *Outleased areas.* Certain portions of naval installations in Hawaii which are not for the time needed for public use or for which a dual use is feasible have been outleased to private interests. Examples of such outleased areas are the Moanalua Shopping Center and lands such as Waipio Peninsula, which has been outleased for agricultural purposes. For the purpose of this Subpart, outleased areas which are not within fenced portions of naval installations are not considered to be a part of naval installations. Rules for entry onto the outleased areas are made by the lessees, except in the case of Waipio Peninsula where the lessee (Oahu Sugar Company) is not authorized to allow anyone to enter Waipio

Peninsula for any purpose not connected with sugar cane production.

§ 770.27 Background.

(a) Naval installations in Hawaii constitute a significant element of the national defense establishment. It is vital to the national defense that the use of such areas be at all times under the positive control of the Department of the Navy. Strict control must be exercised over access to naval installations in order to preclude damage accidental and intentional to Government property, injury to military personnel, and interference in the orderly accomplishment of the mission of command.

(b) There are several industrial areas within naval installations in Hawaii wherein construction activities and the use of heavy machinery pose grave risk of danger to visitors.

(c) Various types of flammable or incendiary materials and ordnance are stored at a number of locations within naval installations in Hawaii.

(d) Classified documents and equipment requiring protection from unauthorized disclosure by Executive order 12065 for reasons of national security are located at various locations within naval installations in Hawaii.

(e) In order to effect the positive control of the Navy over its installations in Hawaii, it is essential that entry onto those installations be restricted to authorized persons only.

(f) These entry regulations are being promulgated under the authority of Commander, Naval Base, Pearl Harbor, who has been assigned as immediate area coordinator for all naval installations in the State of Hawaii by Commander-in-Chief, U.S. Pacific Fleet.

§ 770.28 Entry restrictions.

Each commander is responsible for the security of his/her command. Therefore, entry onto a command or into part of a command may be controlled by the commander through the imposition of such restrictions as may be required by attendant circumstances. Within the State of Hawaii, entry into a naval installation is not permitted without the permission of the responsible commander.

§ 770.29 Entry procedures.

(a) Operational, security, and safety considerations take priority over requests by individuals to visit a naval installation. Consistent with such considerations, visits by members of the general public may be authorized at the discretion of the commander. The commitment of resources which would be required to safeguard the persons and property of visitors as well as military property and personnel must of necessity preclude or severely restrict such visiting. The purpose and duration of the visit and the size of the party and areas to be visited are other considerations which may affect the commander's decision whether to permit visiting by members of the public.

(b) Any person or group desiring to enter a particular naval installation or portion thereof, shall submit a written request to the commander of the installation well enough in advance to allow a reasonable time for reply by mail. Mailing addresses for commanders of major installations covered by this subpart are listed in § 770.31. Full compliance with a naval installation's local visitor registration and entry control procedures shall be deemed the equivalent of obtaining the advance consent of the commander for entrance upon the installation for the purpose of this subpart. Authorization to enter one naval installation or a portion of one installation does not necessarily include the authorization to enter any other naval installation or all portions of an installation.

§ 770.30 Violations.

(a) Any person entering or remaining on a naval installation in the State of Hawaii, without consent of the commander or his authorized representative, shall be subject to the penalties of a fine of not more than $500 or imprisonment for not more than six months, or both. See 18 U.S.C. 1382.

(b) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed $5,000 or imprisonment for one year, or both. See 50 U.S.C. 797.

§ 770.31 List of major naval installations in the State of Hawaii and cognizant commanders authorized to grant access under these regulations.

(a) *On Oahu.* (1) Naval Base, Pearl Harbor (including the Naval Station, Naval Submarine Base, Naval Shipyard, Naval Supply Center, Naval Public Works Center, Marine Barracks, Ford Island, Bishop Point Dock Area, Commander-in-Chief Pacific Fleet and Commander Naval Logistics Command Headquarters Areas, Johnson Circle Navy Exchange/Commissary Store Area, Navy-Marine Golf Course, miscellaneous other commands, and areas within the Naval Base, Pearl Harbor complex, and the waters of Pearl Harbor). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(2) Naval Western Oceanography Center, Pearl Harbor. Contact:

Commanding Officer, Naval Western Oceanography Center, Box 113, Pearl Harbor, Hawaii 96860.

(3) Naval Air Station, Barbers Point. Contact:

Commanding Officer, Naval Air Station, Barbers Point, Hawaii 96862.

(4) Naval Communication Area Master Station, Eastern Pacific, Wahiawa. Contact:

Commanding Officer, Naval Communication Area Master Station, Eastern Pacific, Wahiawa, Hawaii 96786.

(5) Naval Magazine (Lualualei, Waikele, and West Loch). Contact:

Commanding Officer, Naval Magazine, Lualualei, Hawaii 96792.

(6) Naval Radio Transmitting Facility, Lualualei. Contact:

Commanding Officer, Naval Base, Pearl Harbor, Hawaii 96860.

(7) Naval and Marine Corps Reserve Training Center, Honolulu. Contact:

Commanding Officer, Naval and Marine Corps Reserve Training Center, Honolulu, 530 Peltier Avenue, Honolulu, Hawaii 96818.

(8) Military Sealift Command Office. Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(9) Mauna Kapu (Pacific Missile Range Facility). Contact:

Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, Kauai, Hawaii 96752.

(10) Kunia Facility; FORACS III Sites; Degaussing Station, Waipio Peninsula; Damon Tract (Remanant) Opana Communciations Site. Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(11) Outlying areas of the Naval Supply Center, Pearl Harbor (including the Ewa Junction Storage Area, Ewa Drum Storage Area, Manana Supply Area, Pearl City Supply Area, and the Red Hill Fuel Storage Area). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(12) Pump Stations (Halawa, Waiawa, Red Hill, and Barbers Point). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(13) Halawa Water Storage Area; Barbers Point, Independent Water Supply Reservoir Site; Sewage Treatment Plant; Fort Kam (tri-service); Utility Corridors, Lynch Park (Ohana Nui). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(14) Navy housing areas (including Moanalua Terrace, Radford Terrace, Makalapa, Maloelap, Halsey Terrace, Catlin Park, Hale Moku, Pearl Harbor, Naval Shipyard, McGrew Point, Halawa, Hokulani, Manana, Pearl City Peninsula, Red Hill, Iroquois Point, Puuloa, and Camp Stover). Contact:

Commander, Naval Base, Pearl Harbor, Hawaii 96860.

(b) *On Kauai.*

(1) Pacific Missile Range Facility, Barking Sands, Kekaha.

Contact: Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kekaha, Hawaii 96752.

(c) *Other areas.*

(1) Kahoolawe Island. Contact:

Commander, Third Fleet, Pearl Harbor, Hawaii 96860. Also see 32 CFR Part 763.

(2) Kaula. Contact:

Commander, Third Fleet, Pearl Harbor,
Hawaii 96860.

Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

Source: 46 FR 22756, Apr. 21, 1981, unless otherwise noted.

§ 770.35 Purpose.

The purpose of this subpart is to promulgate standard regulations and procedures governing entry upon U.S. Naval installations and properties in Puerto Rico.

§ 770.36 Definitions.

For purposes of these regulations, U.S. Naval installations and properties in Puerto Rico include, but are not limited to, the U.S. Naval Station, Roosevelt Roads (including the Vieques Island Eastern Annexes, consisting of Camp Garcia, the Eastern Maneuver Area, and the Inner Range); the Naval Ammunition Facility, Vieques Island; and the Naval Security Group Activity, Sabana Seca.

§ 770.37 Background.

In accordance with 32 CFR 765.4, Naval installations and properties in Puerto Rico are not open to the general public, *i.e.*, they are "closed" military bases. Therefore admission to the general public is only by the permission of the respective Commanding Officers in accordance with their respective installation instructions.

§ 770.38 Entry restrictions.

Except for duly authorized military personnel and civilian employees, including contract employees, of the United States in the performance of their official duties, entry upon any U.S. Navy installation or property in Puerto Rico at anytime, by any person for any purpose whatsoever without the advance consent of the Commanding Officer of the installation or property concerned, or an authorized representative of that Commanding Officer, is prohibited.

§ 770.39 Entry procedures.

(a) Any person or group of persons desiring to obtain advance consent for entry upon any U.S. Naval installation or property in Puerto Rico from the Commanding Officer of the Naval installation or property, or an authorized representative of that Commanding Officer, shall present themselves at an authorized entry gate at the installation or property concerned or, in the alternative, submit a request in writing to the following respective addresses:

(1) Commanding Officer, U.S. Naval Station, Roosevelt Roads, Box 3001, Ceiba, Puerto Rico 00635.

(2) Officer in Charge, Naval Ammunition Facility, Box 3027, Ceiba, Puerto Rico 00635.

(3) Commanding Officer, U.S. Naval Security Group Activity, Sabana Seca, Puerto Rico 00749.

(b) The above Commanding Officers are authorized to provide advance consent only for installations and properties under their command. Requests for entry authorization to any other facility or property shall be addressed to the following:

Commander, U.S. Naval Forces, Caribbean, Box 3037, Ceiba, Puerto Rico 00635.

(c) Each request for entry will be considered on an individual basis and consent will be determined by applicable installation entry instructions. Factors that will be considered include the purpose of visit, the size of party, duration of visit, destination, security safeguards, safety aspects, and the military resources necessary if the request is granted.

§ 770.40 Violations.

Any person entering or remaining on U.S. Naval installations and properties in Puerto Rico, without the advance consent of those officials hereinabove enumerated, or their authorized representatives, shall be considered to be in violation of these regulations and therefore subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months, or both," or any other applicable laws or regulations.

Subpart E—Base Entry Regulations for Naval Submarine Base New London, Groton, Connecticut

AUTHORITY: 50 U.S.C. 797; DoD Directive 5200.8 of July 29, 1980; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5510.45 of April 19, 1971; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 48 FR 5555, Feb. 7, 1983, unless otherwise noted.

§ 770.41 Purpose.

The purpose of this subpart is to promulgate regulations and procedures governing entry upon Naval Submarine Base New London, and to prevent the interruption of the stated functions and operations of Naval Submarine Base New London, by the presence of any unauthorized person within the boundaries of Naval Submarine Base New London.

§ 770.42 Background.

Naval Submarine Base New London maintains and operates facilities to support training and experimental operations of the submarine force including providing support to submarines, submarine rescue vessels, and assigned service and small craft; within capabilities, to provide support to other activities of the Navy and other governmental activities in the area; and to perform such other functions as may be directed by competent authority.

§ 770.43 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Naval Submarine Base New London is vested with the Security Officer.

§ 770.44 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and employees of the United States in the performance of their official duties, entry upon Naval Submarine Base New London, or remaining thereon by any person for any purpose without the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative is prohibited. *See* 18 U.S.C. 1382j, the Internal Security Act of 1950 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; and Secretary of the Navy Instruction 5511.36 of December 20, 1980.

§ 770.45 Entry procedures.

(a) Any individual person or group of persons desiring the advance consent of the Commanding Officer, Naval Submarine Base New London, or his authorized representative shall, in writing, submit a request to the Commanding Officer, Naval Submarine Base New London, at the following address. Commanding Officer (Attn: Security Officer), Box 38, Naval Submarine Base New London, Groton, Connecticut 06349.

(b) Each request for entry will be considered on an individual basis weighing the operational, security, and safety requirements of Naval Submarine Base New London with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.46 Violations.

(a) Any person entering or remaining on Naval Submarine Base New London, without the consent of the Commanding Officer, Naval Submarine Base New London or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . shall be fined not more than $500 or imprisoned not more than six months or both."

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5000 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart F—Base Entry Regulations for Puget Sound Naval Shipyard, Bremerton, Washington

AUTHORITY: 50 U.S.C. 797; DoD Directive 5200.8 of July 29, 1980; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5510.45B of April 19, 1971; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714.

SOURCE: 48 FR 9858, Mar. 9, 1983, unless otherwise noted.

§ 770.47 Purpose.

The purpose of this subpart is to promulgate policy governing entry upon Puget Sound Naval Shipyard.

§ 770.48 Definition.

For the purpose of this subpart, Puget Sound Naval Shipyard is defined as follows:

(a) Beginning at a point, latitude 122°39′37″W, longitude 47°33′05″N, a point on the MHHW line of Sinclair Inlet on an East-West line approximately 100 yards clear off the Southerly end of the Naval Shipyard shoreline, piers or drydock facilities; thence Northeasterly to the South margin of Primary State Highway No. 21, thence Northeasterly on the Southeasterly margin of Primary State Highway No. 21 to the Easterly margin of Cambrian Avenue; thence Northerly to the Southerly margin of Farragut Street; thence Easterly to the line common to Sections 22 and 23, Township 24 North, Range 1 East, W.M. which is approximately 100 feet East of the East margin of Montgomery Street; thence Northerly to the corner common to Sections 14, 15, 22, and 23, Township 24 North, Range 1 East, W.M., which is the South margin of First Street; thence Easterly on the line common to Sections 14 and 23 to the Easterly margin of Chester Avenue; thence Northerly approximately 335 feet on the Easterly margin of Chester Avenue to the Southerly margin of the East-West alley in Block 21, Original Town of Bremerton as recorded in Volume 2 of Plats, page 30, Records of Kitsap County, Washington; thence Easterly to the Easterly margin of Warren Avenue; thence Northerly to the Southerly margin of Burwell Avenue; thence Easterly approximately 1315 feet to a point approximately 90 feet West of the West margin of Pacific Avenue, to the line common to Lots 22 and 23, Block 13, said Original Town of Bremerton; thence Southerly to the Northerly margin of the East-West alley in said Block 13; thence Easterly to the Northerly extension of the Westerly margin of the North-South alley in Block 12, said Original Town of Bremerton; thence Southerly to the Southerly margin of First Street; thence Easterly to the Westerly margin of First Street; thence Easterly to the Westerly margin of the North-South alley in Block 10, said Original Town of Bremerton; thence Southerly to the Northwesterly margin of Washington Avenue; thence Southeasterly to the Northwesterly corner of Lot 9, Block 1, said Original Town of Bremerton; thence Southeasterly on the line common to Lots 8 and 9, Block 1, and its Southeasterly extension to a point near the Washington State Ferry Terminal at the MHHW line of Sinclair Inlet located at Latitude 122°37′27″W, longitude 47°33′44″N.

§ 770.49 Background.

(a) Puget Sound Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Puget Sound Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(b) For prevention of the interruption of the stated use of Puget Sound Naval Shipyard by the presence of any unauthorized person within the boundaries of Puget Sound Naval Shipyard and prevention of injury to any such unsupervised person as a consequence to the hazardous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Puget Sound Naval Shipyard to authorized persons only.

§ 770.50 Entry restrictions.

Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon Puget Sound Naval Shipyard, or remaining thereon by any person whoever for any purpose without the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, is prohibited. *See* 18 U.S.C. 1382; the Internal Security Act of 1950, Section 21 (50 U.S.C. 797); Chief of Naval Operations Instruction 5510.45B of April 19, 1971; Secretary of the Navy Instruction 551.36 of December 20, 1980; and Department of Defense Directive 5200.8 of July 29, 1980.

§ 770.51 Entry procedures.

(a) Any person or group of persons desiring the advance consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Puget Sound Naval Shipyard, at the following address: Commander, Puget Sound Naval Shipyard, Bremerton, Washington 98314.

(b) Each request for entry will be considered on an individual basis weighing the operational, security and safety requirements of Puget Sound Naval Shipyard with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of this request.

§ 770.52 Violations.

(a) Any person entering or remaining on Puget Sound Naval Shipyard, without the consent of the Commander, Puget Sound Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months or both."

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5000.00 or imprisonment for not more than one (1) year or both as provided in 50 U.S.C. 797.

Subpart G—Entry Regulations for Portsmouth Naval Shipyard, Portsmouth, New Hampshire

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 6011, 18 U.S.C. 1382; 50 U.S.C. 797; DOD Directive 5200.8 of July 29, 1980; 32 CFR 700.702; 32 CFR 700.714; SECNAVINST 5511.36 of December 20, 1980; OPNAVINST 5530.14 of June 10, 1983; COMNAVSEASYSCOMINST 5510.2A of June 19, 1981.

SOURCE: 49 FR 34003, Aug. 28, 1984, unless otherwise noted.

§ 770.53 Purpose.

To promulgate regulations and procedures governing entry upon Portsmouth Naval Shipyard, and to prevent the interruption of the functions and operations of Portsmouth Naval Shipyard by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard.

§ 770.54 Background.

(a) Portsmouth Naval Shipyard maintains and operates facilities "to provide logistic support for assigned ships and service craft; to perform authorized work in connection with construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of ships and craft, as assigned; to perform manufacturing, research, development, and test work, as assigned; and to provide services and material to other activities and units, as directed by competent authority."

(b) Portsmouth Naval Shipyard is a major naval ship repair facility, with operational requirements to complete repairs and overhaul of conventionally powered and nuclear-powered naval vessels. It is vital to national defense that the operation and use of the shipyard be continued without undue or unnecessary interruptions. Additionally, most of Portsmouth Naval Shipyard is dedicated to heavy industrial activity where potentially hazardous conditions exist.

(c) For prevention of interruption of the stated use of the base by the presence of any unauthorized person within the boundaries of Portsmouth Naval Shipyard, and prevention of injury to any such unsupervised person as a consequence of the dangerous conditions which exist, as well as for other reasons, it is essential to restrict entry upon Portsmouth Naval Shipyard to authorized persons only.

§ 770.55 Responsibility.

The responsibility for proper identification and control of personnel and vehicle movement on the Portsmouth Naval Shipyard is vested with the Shipyard Security Manager (Code 830).

§ 770.56 Entry restrictions.

Except for military personnel, their authorized dependents, or guests, and civilian employees of the United States in the performance of their official duties, entry upon Portsmouth Naval Shipyard, or remaining thereon by any person for any purpose without the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, is prohibited. In many instances, Commander, Naval Sea Systems Command, approval is required.

§ 770.57 Entry procedures.

(a) Any person or group desiring the advance consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall, in writing, submit a request to the Commander, Portsmouth Naval Shipyard, at the following address: Commander, Portsmouth Naval Shipyard, Portsmouth, New Hampshire 03801, Attention: Security Manager (Code 830). For groups, foreign citizens, and news media, the request must be forwarded to the Commander, Naval Sea Systems Command, for approval.

(b) Each request for entry will be considered on an individual basis, weighing the operational, security, and safety requirements of Portsmouth Naval Shipyard, with the purpose, size of party, duration of visit, destination, and military resources which would be required by the granting of the request.

§ 770.58 Violations.

(a) Any person entering or remaining on Portsmouth Naval Shipyard without the consent of the Commander, Portsmouth Naval Shipyard, or his authorized representative, shall be subject to the penalties prescribed in 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval . . . reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation . . . Shall be fined not more than $500 or imprisoned not more than six months, or both."

(b) Moreover, any person who willfully violates this instruction is subject to a fine not to exceed $5000 or imprisonment for not more than one (1) year, or both, as provided by 50 U.S.C. 797.

PARTS 771-774—[RESERVED]

PART 775—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 4321-4361; 40 CFR Parts 1500-1508

SOURCE: 46 FR 22893, Apr. 22, 1981, unless otherwise noted.

§ 775.1 Purpose.

To supplement Department of Defense (DOD) regulations by providing policy and assigning responsibilities to the Navy and Marine Corps for the implementation of the Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) appearing at 40 CFR Parts 1500-1508.

§ 775.2 Scope.

The policies and responsibility assignments of this instruction apply to the Office of the Secretary of the Navy, the Navy Department, and the Navy and Marine Corps operating forces and shore establishment. This rule is limited to the actions of these elements with environmental effects in the United States.

§ 775.3 Policy.

(a) The Department of the Navy (DoN) must act with care to ensure, to the maximum extent possible, that in carrying out its mission of providing for the national defense, it does so in a manner consistent with national environmental policies. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decisionmaking tool this process will be integrated with other Navy-Marine Corps project planning at the earliest possible time. This insures that planning and decisionmaking reflect environmental values, avoid delays later in the process, and avoid potential conflicts. Care must be taken to ensure that, consistent with other considerations of national policy and with national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended;

(2) Preserving important historic, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The DoN shall:

(1) Assess environmental consequences of proposed naval actions that could affect the quality of the environment in the United States in accordance with DOD and CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and environmental considerations in planning and decisionmaking where there may be an impact on man's environment;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources;

(5) Make available to states, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment; and

(6) Use ecological information in planning and developing resource-oriented projects.

§ 775.4 Responsibilities.

(a) The Deputy Under Secretary of the Navy shall:

(1) Advise the Secretary of the Navy on the formulation of DoN policy regarding NEPA compliance.

(2) Maintain coordination with the CEQ, the Environmental Protection Agency (EPA), the Deputy Assistant Secretary of Defense (Energy, Environment and Safety), other DOD components and Federal agencies concerned with NEPA matters, and with private environmental groups as applicable.

(3) Approve and forward Environmental Impact Statements (EIS) to the EPA and to other appropriate agencies for review and comment.

(4) Approve and forward Findings of No Significant Impact for publication in the FEDERAL REGISTER for those ac-

tions of national concern that the Navy/Marine Corps has determined will not have a significant effect on the human environment and for which an EIS will not be prepared.

(5) Approve and publish a Record of Decision which will summarize for the public record the decision made by the Navy/Marine Corps among the alternatives presented in a Final EIS. The Record shall include publication in the FEDERAL REGISTER and may, as appropriate, include notification as identified in 40 CFR 1506.6.

(6) Maintain liaison with the Chief of Information, who will coordinate with the Assistant Secretary of Defense (Public Affairs) those environmental matters which have significant public affairs implications.

(b) The Chief of Naval Operations, or his designee, and the Commandant of the Marine Corps, or his designee, are responsible, within their respective services, for NEPA compliance, which includes:

(1) Implementing DoN policy regarding the protection of the environment to include NEPA compliance.

(2) Advising commands in cases of necessity of the requirement for submitting environmental assessments or impact statements.

(3) Coordinating as appropriate with the President's CEQ, the EPA, the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (MRA&L), the Assistant Secretary of the Navy (MRA&L), the Deputy Under Secretary of the Navy, and other DOD components and Federal agencies concerned with environmental matters.

(4) Serving as the points of contact for DoN environmental matters.

(5) Coordinating, as appropriate, with the Chief of Information for the release to the public of environmental assessments, impact statements, final Findings of No Significant Impact, and other environmental documents, according to the Freedom of Information Act and other applicable Federal laws.

(6) Providing assistance for actions initiated by private persons, state or local agencies and other non-DoN/DOD entities for which DoN involvement may be reasonably foreseen.

(7) Identifying major decision points in the chain of command where environmental effects shall be considered. Examples of such decision points are the Chief of Naval Material for systems development and construction, and Fleet Commanders for matters involving operations, training, readiness, etc.

(8) Ensuring that relevant environmental documentation accompanies all proposals for action through the appropriate review process, so that such information is available to the decision maker.

(c) The Chief of Naval Operations and the Commandant of the Marine Corps are to comply with this instruction by subsequently directing subordinates to:

(1) Ensure all appropriate instructions include the requirement and funding for environmental documentation, as required;

(2) Conduct analyses of the environmental effects of current and proposed actions in accordance with DOD regulations, the regulations of the CEQ (40 CFR Parts 1500–1508), and other applicable regulations;

(3) Encourage, to the extent practicable, citizen participation in environmental evaluations of projects or programs;

(4) Evaluate environmental impacts at initial planning stages and at each following significant step or decision milestone in the development of a project or program, as warranted.

§ 775.5 Classified actions.

The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with the NEPA. Nevertheless, the EIS, both draft and final, as well as supplements, shall be prepared, safeguarded and disseminated in accordance with the requirements applicable to classified information. When feasible, these documents shall be organized in such a manner that classified portions are included as annexes so that the unclassified portions can be made available to the public.

§ 775.6 Planning considerations.

When integrating the NEPA process into early stages of proposed naval actions, addressees will determine as early as possible whether to prepare an EIS.

(a) To identify those actions that normally require the preparation of an EIS, the following criteria are provided:

(1) Potential for significant degradation of environmental quality—as, for example, the establishment of a new operating base;

(2) Potential for threat or hazard to the public—as for example, the establishment of a new training area;

(3) Potential for significant impact on protected natural or historic resources—as, for example, the proposed destruction of an existing sitestructure to make way for new construction.

(b) In any case involving a proposed action of the sort that normally requires an EIS, the command responsible for preparation of the appropriate documentation may still prepare an environmental assessment to determine if an EIS is required based on the facts. If a determination is made on the environmental assessment that no EIS is required on the particular facts, a Finding of No Significant Impact will be prepared and made available to the public in accordance with CEQ regulations.

(c) CEQ regulations provide for the establishment of categorical exemptions (40 CFR 1507.3(b)) for those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an EIS is required. Considerations to assist in identifying categories of actions that normally do not require either an EIS or an environmental assessment include:

(1) Minimal or no significant effect on environmental quality;

(2) No significant change to existing environmental conditions;

(3) No significant cumulative environmental impact;

(4) Social and economic effects only;

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(d) Although extraordinary circumstances may arise in which normally excluded actions may have a significant effect, and therefore generate a requirement for environmental analyses, typical classes of action which are categorically excluded are:

(1) An action the effects of which are included in a previously written assessment, or draft or final EIS.

(2) Preparation of regulations, directives, manuals, or other guidance documents that implement, without substantial change, the regulations, directives, manuals, or other guidance documents from higher headquarters or another Federal agency.

(3) Emergency activities (*e.g.*, riot control or search and rescue activities). These do not require assessments or an environmental statement. Emergency situations generating a response by naval authorities which result in significant harm to the environment shall be reported to the Secretary of the Navy, who will facilitate consultation with the CEQ.

(4) Routine movement of mobile sources, such as the assignment of ships and aircraft to perform as operational groups and/or their assignment for repair and overhaul, for example.

(5) Routine maintenance and repair, such as repair of naval systems and equipment aboard naval bases and stations.

(6) Reductions in force wherein there is not an interrelation with natural or physical environmental effects.

(7) Continuing actions if there is no substantial, adverse change from previously existing conditions, and it has been determined that there were no prior natural or physical environmental effects.

(8) Minor training exercises on military property, assuming all applicable environmental and natural resource conservation laws have been complied with.

(9) Land and facility transfers to another Federal agency wherein the General Services Administration is the action agency.

(10) Regulations which do not significantly affect the quality of the human environment in their implementation.

(11) Routine procurements for goods and resources.

(12) Basic and applied scientific research normally confined to the laboratory in question and again assuming that all applicable environmental and natural resource conservation laws have been complied with.

(13) Studies that involve no commitment of resources other than manpower and funding allocations.

(14) Proposed actions that, based on sound judgment, are of such an environmentally insignificant nature that they clearly do not meet the threshold for requiring an environmental assessment or EIS.

(15) Other categories as identified by the Chief of Naval Operations, or his designee, and/or the Commandant of the Marine Corps, or his designee, in appropriate directives implementing this instruction. In the identification of additional categories, the approval of the Secretary of the Navy shall be obtained prior to their implementation.

(e) When a proposed action is not one that normally requires an EIS and does not qualify for categorical exemption, an environmental assessment shall be prepared.

§ 775.7 Time limits for environmental documents.

The timing of the preparation, circulation, submission and public availability of environmental documents is important in achieving the purposes of the NEPA. Commencement of the NEPA process shall be undertaken as early as possible in the decisionmaking process.

(a) The EPA publishes a weekly notice in the FEDERAL REGISTER of the environmental impact statements filed during the preceding week. The following time periods calculated from publication of the EPA notice are applicable:

(1) Draft statements should be available to the public for 15 days prior to any public hearing on the Draft EIS (40 CFR 1506.6(c)(2)).

(2) Not less than 45 days from publication of notice of filing shall be allowed for public comment on Draft statements prior to filing of the Final EIS (40 CFR 1506.10(c)).

(b) Prior to any decision on the proposed action, Draft statements shall be available to the public for not less than 90 days. Final statements which shall be published after public review and comment shall similarly be available to the public for at least 30 days. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

§ 775.8 Scoping.

As soon as practicable after the proponent of a DoN project or action decides to prepare an EIS, an early and open process called "scoping" shall be used for determining the scope of issues to be addressed and for identifying the significant issues to be analyzed in depth related to the proposed action (40 CFR 1501.7). This process also serves to deemphasize insignificant issues, narrowing the scope of the EIS process accordingly (40 CFR 1500.4(g)). Scoping results in the identification by the proponent of the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For any action, this scope may depend on the relationship of the proposed action to other existing environmental documentation.

§ 775.9 Documentation and analysis.

Environmental documentation and analyses required by this rule should be integrated as much as practicable with any environmental studies, surveys and impact analyses required by other environmental review laws and executive orders (40 CFR 1502.25). When a cost-benefit analysis has been prepared in conjunction with an action which also requires a NEPA analysis, the cost-benefit analysis shall be integrated into the environmental documentation.

§ 775.10 Relations with state, local and regional agencies.

Close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, counties, and states, for cooperation and resolution of mutual land use and environment-related problems should be established. Additional coordination may be obtained from state and area-wide planning and development "clearinghouses". These are agencies which have been established pursuant to the Office of Management and Budget Revised Circular A-95, "Federal and Federally-assisted Programs and Projects", 38 FR 32874 (28 November 1973). Since the A-95 clearinghouses serve a review and coordination function for Federal activities, the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. They would also be able to assist in identifying possible participants in scoping procedures for projects requiring and EIS.

§ 775.11 Public participation.

The importance of public participation in preparing environmental assessments shall be recognized (40 CFR 1501.4(b)). In determining the extent to which public participation is practicable, the following are among the factors to be weighed by the command preparing the environmental documentation:

(a) The magnitude of the proposed action;

(b) The extent of anticipated public interest; and

(c) Any relevant questions of national security classification.

§ 775.12 Action.

The Chief of Naval Operations and the Commandant of the Marine Corps shall, each, as appropriate:

(a) Provide guidelines and procedures for administrative direction and implementation of this rule and CEQ regulations; and

(b) Maintain a focal point for the coordination of the preparation of environmental assessments and impact statements.

PARTS 776–799—[RESERVED]

FINDING AIDS

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